In the Supreme Court of the United States.

OCTOBER TERM, 1921.

UNITED STATES OF AMERICA, PETITIONER,
v.
A. C. LOUCKS ET AL. } No.—

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

The Solicitor General, on behalf of the United States, prays for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Fifth Circuit in the above-entitled cause.

QUESTION PRESENTED.

The case presents the main question whether certain land bordering upon Ferry Lake in Louisiana, a navigable body of water, was, as matter of law, included in a public-land survey made in 1839 and therefore passed under a United States patent issued in 1860 with reference to the plat of such survey; or whether the land was omitted from said survey and therefore remained public land of the United States.

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THE FACTS.

The United States brought suit to quiet its title to certain lands which had been withdrawn from entry by Executive order of December 15, 1908. It also prayed for an injunction, for discovery, for an accounting of the oil and gas taken, for the appointment of a receiver, and for other relief as set forth in its bill.

Defendants answered asserting title as riparian proprietors under a United States patent issued in 1860.

Decrees were entered in favor of the United States on the issue of title, but against its contention that defendants ought not to be allowed credit for the cost of drilling and operating the oil well through which the oil was extracted.

Defendants appealed to the Circuit Court of Appeals from the decree on the issue of title and the United States took a cross appeal from the allowance of defendants' counterclaim for the cost of drilling and operation.

The Circuit Court of Appeals reversed the decree below, with directions that the Government's bill be dismissed by the District Court, and dismissed the Government's cross appeal.

REASONS FOR ALLOWANCE OF WRIT.

As the matter in controversy does not exceed $1,000, an appeal will not lie from the decree of the Circuit Court of Appeals. The case is similar to *United States* v. *Charles J. Greene, Jr., et al.*, No. —,

which is now before this court on appeal. These two cases were heard together in the court below. Other cases presenting the same question are before this court on appeal. (*United States* v. *Gulf Refining Co. of Louisiana*, No 501; *United States* v. *Gulf Refining Co. et al.*, No. 503; *United States* v. *C. W. Lane et al.*, No. 500; *United States* v. *Southwestern Gas & Electric Co. et al.*, No. 502.) It is desirable and important that there be uniformity of decision. Neither the Government nor the defendants ought to be subjected to conflicting decisions, especially since the rights and interests of the defendants and the Government are the same in all. There seems to be no reason why all the cases can not be argued at the same time.

The writ here prayed for is allowable by virtue of section 240, Judicial Code, where the jurisdictional amount prescribed by section 241 of the code is not in controversy, because the decision of the Circuit Court of Appeals is made final by the combined effect of sections 128 and 241 of the code. (*Spiller* v. *A., T. & S. F. Ry. Co.*, 253 U. S. 117, 121.)

It is respectfully submitted that a writ of certiorari should issue as prayed and that the decree of the Circuit Court of Appeals should be reversed.

JAMES M. BECK,
Solicitor General.

OCTOBER, 1921.

○

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 192.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING COMPANY AND LOUISIANA OIL REFINING CORPORATION.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED OCTOBER 10, 1922.

(28,533)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 192.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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1 United States of America, United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1920, at New Orleans, Louisiana, before the Honorable Richard W. Walker, the Honorable Nathan P. Bryan, and the Honorable Alex. C. King, Circuit Judges:

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING COMpany, and Louisiana Oil Refining Corporation, appellants and cross appellees,

versus

THE UNITED STATES OF AMERICA, APPELLEE AND CROSS appellant.

Be it remembered that heretofore, to wit, on the 21st day of April, A. D. 1920, a transcript of the record in the above styled cause, pursuant to an appeal and cross appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 3523, as follows, to wit:

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA.

UNITED STATES OF AMERICA,

Complainant,

versus No. 1155 In Equity.

CHARLES J. GREENE, JR., ET AL,

Defendants.

Appeal taken by Defendants, and Cross Appeal taken by the Complainant to the United States Circuit Court of Appeals, Fifth Circuit, New Orleans, La.

STIPULATION AS TO ORIGINAL EXHIBITS.

Filed in U. S. Circuit Court of Appeals May 25th, 1920.

In the District Court of the United States for the Western District of Louisiana.

United States v. C. W. Lane, et al., No. 1153.
United States v. Charles J. Greene, et al., No. 1155.
United States v. Jeems Bayou Fishing & Hunting Club, et al., No. 1157.
United States v. Gulf Refining Company of Louisiana, No. 1158.

United States v. W. H. Enders, et al., No. 1160.

United States v. Southwestern Gas & Electric Co., et al., No. 1162.

United States v. J. M. Walling, et al., No. 1163.

United States v. Mrs. Jessie M. LaRobadierre, et al., No. 1164.

United States v. A. C. Loucks, et al., No. 1165.

STIPULATION OF COUNSEL.

In the above numbered and entitled suits it is agreed by and between counsel for all parties as follows, to-wit:

That, whereas, there have been sent up to the United States Circuit Court of Appeals certain maps and exhibits in the original for reproduction in each of the several transcripts, namely:

1. Plat of survey made by A. W. Warren, Deputy Surveyor, approved August 31, 1839.

2. Field notes of the Warren survey.

3. Resurvey plat of Township 20 North, Range 16 West, approved by the Commissioner of the General Land Office, July 24, 1916.

4. Supplemental plat of Township 20 North, Range 16 West, approved March 28, 1917, by the Commissioner of the General Land Office.

5. Supplemental Topographic Plat of Township 20 North, Range 16 West, approved March 28, 1917, by the Commissioner of the General Land Office.

6. Illustrative profile, marked Plaintiff's Exhibit F.

Whereas, all of the above suits have been appealed from the United States District Court for the Western District of Louisiana to the United States Circuit Court of Appeals for the Fifth Circuit, and all of said plats and exhibits, with the exception of the illustrative profile above mentioned, were included in the original in the transcript of appeal in the suit entitled United States v. Jeems Bayou Fishing & Hunting Club, et al., No. 1157; and

Whereas, exhibits numbered one to five, inclusive, are applicable to all of said suits, and exhibit No. 6 is applicable to suits Nos. 1153, 1158, 1162, 1163 and 1164; and,

Whereas, the cost of reproducing and incorporating the said exhibits in the several transcripts will be very large; now, therefore:

It is agreed that in lieu of reproducing and including the said exhibits in the respective transcripts, the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit may bind or fasten together, in such manner as he may deem proper the said plats and exhibits and index the same so that ready reference may be had to them in the cases to which they are applicable.

It is further agreed that the said exhibits shall be deemed and considered as a part of the records on appeal in each of the said suits, as far as applicable thereto, to the same extent as if the exhibits mentioned had been reproduced and incorporated in the several transcripts.

It is further agreed that this stipulation shall be printed in each of the transcripts of appeal heretofore filed in the United States Circuit Court of Appeals for the Fifth Circuit in suits No. 1157, 1155, 1160 and 1165.

It is further agreed that a duplicate of this stipulation shall be filed in the United States District Court for the Western District of Louisiana, and shall be copied into the transcript of appeal in suit No. 1153, entitled, United States v. C. W. Lane, et al., the record in which case will, by stipulation, be made a part of the record on appeal in suits Nos. 1158, 1162, 1163 and 1164.

Thus done and signed, in duplicate this 18 day of May, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

FOSTER, LOONEY &
WILKINSON,
CLEM RATCLIFF,
BLANCHARD, GOLDSTEIN &
WALKER,
HAMPDEN STORY,
WILKINSON, LEWIS &
WILKINSON,
BARNETTE & BLANCHARD,
THIGPEN & HEROLD,
S. M. COOK,
Attorneys for all Defendants.

J. L. PUGH,
Atty. for Standard Oil Co. of La.

1 (BILL OF COMPLAINT).

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America, Plaintiff,

vs. No. 1155 In Equity.

Charles J. Greene, Jr., Amateur Oil Company, Incorporated, Louisiana Oil Refining Company, Defendants.

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana, sitting within and for the Shreveport Division:

The United States of America, by its solicitor, Robert A. Hunter, Special Assistant to the Attorney General, acting herein under the direction and by the authority of the Attorney General of the United States, brings this bill of complaint against the following defendants:

Charles J. Greene, Jr., a citizen of Louisiana and a resident of the City of Natchitoches, in the Western District of said State;

Amateur Oil Company, Incorporated, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of Shreveport, Western District of said State; and the

Louisiana Oil Refining Company, a corporation organized under the laws of the State of Louisiana, and domiciled in the City of Shreveport, Western District of said State;

and thereupon complains and shows unto your Honor:

I.

That on and before December 15, 1908, the plaintiff was the owner, as a part of its public domain, of a certain tract of land, which was then unsurveyed public land of the United States, but which has since been surveyed under the directions and with the approval of the Secretary of the Interior, and is now known and described at Lots Numbered Two (2) and Three (3) of Section Twenty-seven (27), in Township (20), North of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing sixty-five and seventy-seven hundredths acres, as shown by a plat of survey approved
2 March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana.

That on and prior to the aforesaid date plaintiff was, and still is, the owner and entitled to the possession of the above described land, and likewise of all oil, petroleum, gas and other minerals therein contained.

II.

On December 15, 1908, in order to conserve the public interests, and in aid of such legislation as might thereafter be proposed, recommended and enacted, the President of the United States, by and through the Secretary of the Interior, and under the legal authority vested in him so to do, duly and regularly withdrew from settlement and entry and from all other forms of appropriation, all of the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, which withdrawal included the lands herein involved.

On the 2nd day of July, 1910, the President of the United States, acting by and through the Secretary of the Interior, by executive order, and under special authority conferred by the act of June 25, 1910, entitled "An Act to authorize the President of the United States to make withdrawals of Public Lands in certain cases", ratified and confirmed and continued in full force and effect the previous order of withdrawal of December 15, 1908, above set forth, insofar as it affected the land described herein, including the same as a part of Petroleum Reserve Number Four. That such lands so withdrawn by said order of July 2, 1910, including the land herein involved, were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States.

Neither of said orders of withdrawal has ever been vacated but both are now in full force and effect, and said lands above named, including the property involved herein, ever since the date of the first withdrawal, December 15, 1908, have not been subject to exploration for oil, petroleum, gas or other minerals, or to location or entry of any kind under the general land laws, or mineral laws, of the United States.

3 III.

Plaintiff avers that notwithstanding said orders of withdrawal, and in violation of the rights of the plaintiff, and contrary to its laws, and without any valid title, lawful right or authority, the defendants herein, in bad faith, entered upon and took possession of the tract particularly described in paragraph I hereof, for the purpose of drilling thereon for oil and gas, and did so drill one well known as "Greene No. 5", and did withdraw

therefrom large quantities of oil and gas, the exact amount and value of which is unknown, all to the great and irreparable injury of plaintiff.

IV.

That on and prior to the dates of the withdrawal orders hereinabove set forth, to-wit, December 15, 1908, and July 2, 1910, none of the said defendants, or any one from whom the defendants, or any of them, claim, was in the possession of said land, or a bona fide occupant thereof in diligent prosecution of work thereon leading to a discovery of oil or gas, and no such discovery was in fact made prior to said orders of withdrawal, nor until long after said orders were issued, and had become effective to withdraw said land from location, entry and other appropriation.

V.

That no mineral location was in fact made by any of the defendants herein on the land upon which said well is located, but plaintiff states that the said oil was extracted from the said lands under color of a pretended claim of ownership in and to said lands by the defendants herein.

Plaintiff avers that the said Charles J. Greene, Jr., Amateur Oil Company, Incorporated, and the Louisiana Oil Refining Company, defendants, have no right, title or interest in and to the said tract of land, but acting under said pretended claim of ownership, and subsequent to the withdrawal orders hereinabove referred to, entered upon the said tract of land, drilled a well thereon, as aforesaid, and took therefrom a large quantity of oil and gas, which the said Amateur Oil Company, Incorporated,

has marketed and sold to the said Louisiana Oil Refining Company, defendant herein. That the said Amateur Oil Company, Incorporated, received the price of the oil and gas so produced, marketed and sold by it, and
4 paid a royalty out of the same to defendant, Charles J. Greene, Jr., the amount of which price so received, and of which royalty so paid, is to the plaintiff unknown.

The exact quantity of oil and gas so produced, withdrawn from the land, marketed and sold, the value thereof, and the price and royalties paid to, and received by, the defendants herein, being unknown to the plaintiff, full discovery from the said defendants is sought.

VI.

Except as in this bill stated, the plaintiff has no other knowledge or information concerning the nature of any claims in or to said land asserted by the defendants herein, or any of them, and therefore leaves said defendants to set forth their respective claims or interests. In that behalf plaintiff alleges that the defendants have not, and never had, any right, title or interest in or to, or lien upon, the said land, or any part thereof, or any right, title or interest in or to the petroleum, minerals, oil or gas therein, but, on the contrary, the acts of said defendants who have entered upon said land and drilled for oil and gas thereon and used and appropriated the petroleum and gas deposited therein, and assumed to sell and convey any interest in or to any part of said land, were all in violation of the laws of the United States, and of the aforesaid orders withdrawing and reserving said land, and all of said acts were, and are, in violation of the rights of plaintiff and interfere with its public policy with respect to said land.

VII.

Plaintiff avers that the defendants are now unlawfully trespassing upon the said land and are asserting claims thereto and will continue to do so; that they will also drill other wells, operate the same, and sell and dispose of the oil and gas produced therefrom, and, unless restrained by order of this Court, will otherwise trespass on said land, to the great and irreparable damage of the plaintiff.

VIII.

Plaintiff avers that the value of said land and the oil and gas taken therefrom exceeds the sum of Eight Hundred ($800.00) Dollars, and that all of the defendants herein acted in bad faith in the premises.

IX.

5 In consideration whereof and forasmuch as the plaintiff is without full adequate and complete remedy in the premises save in a Court of equity, plaintiff prays:

1. That the said defendants be each required to make full, true and direct answers to all and singular the matters and things herein set forth, and to disclose their claim to said land and the amount and value of the oil and gas taken therefrom, as fully as if they had been particularly interrogated.

2. That the land above described may be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, en-

try, location, sale or other form of appropriation under the public land or mineral laws of the United States.

3. That any and all claims asserted by said defendants, or any of them, in or to the said land, and any and all leases, transfers and conveyances thereof, made by defendants, affecting the said land, be declared null and void, and that the same be cancelled and annulled.

4. That the land above described may be adjudged and decreed to be the perfect property of the plaintiff, free and clear of all claims of the said defendants or any of them, and that the possession of said land may be restored to the plaintiff.

5. That said defendants, during the progress of this cause, and finally and perpetually, may be enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon the plaintiff's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom.

6. That a receiver may be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of boring and extracting, storing and transporting oil or gas, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof.

6 7. That an accounting may be had by each of said defendants wherein each of them shall make a full, complete, itemized and correct disclosure of the quantity of oil and gas removed or extracted from said land and of any and all moneys, or things of value, derived from the sale and disposition of same, and all rents, royalties and proceeds arising from the sale or lease of same, and that the plaintiff may recover from the said defendants, respectively, all such sums so received by them, and all damages sustained by plaintiff in the premises.

8. That plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please the Court that writs of subpoena issue directed to Charles J. Greene, Jr., Amateur Oil Company, Incorporated, and the Louisiana Oil Refining Company, defendants, commanding them at a certain time and under a certain penalty therein to be named, to appear before this Honorable Court and then and there full, true and direct answers make to all and singular the premises, and to stand to perform and abide by such order, direction and decree as may be made against them in the premises and as shall be meet and agreeable to equity.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

AFFIDAVIT.

United States of America,
Northern District of California.

D. R. Thompson, being first duly sworn, deposes and says:

That he is Mineral Inspector of the General Land Office, and, as such, has made investigation of the status of the lands belonging to the United States in the Parish of Caddo, Louisiana, from which oil and gas have been extracted, and particularly, of the land described in the foregoing bill of complaint, withdrawn by the President from entry, location and all forms of appropriation by order of December 15, 1908, and July 2, 1910; and that from the examination of such lands, and from examination of the records of the General Land Office and of the Local Land Office in the State of Louisiana, he has knowledge of the facts set forth in the foregoing bill of complaint, and that the facts and allegations therein contained are true.

D. R. THOMPSON.

Sworn to and subscribed before me this 5th day of July, 1917.

(Seal) LYLE S. MORNS,
Deputy Clerk United States District Court, Northern District of California.

Indorsed:—Bill of Complaint. Filed July 19, 1917.

8 ANSWER OF DEFENDANT, AMATEUR OIL COMPANY, INCORPORATED.

The defendant, Amateur Oil Company, Inc., for its answer to the bill in equity, herein exhibited against it, says:

1.

That it is not fully informed and advised as to the truth of the allegation of article one of the petition, and for that reason, it is denied, and strick proof is required.

2.

The defendant is advised that the allegation in article two is true, and it is admitted.

3.

This defendant denies article three of the petition, in so far as it charges bad faith. It admits that it entered upon said land and drilled a well and exploited for oil, and further that oil was discovered in said well, and that said well drilling together with the equipment thereof, cost this defendant the sum of $8000.00, which it is entitled to have refunded to it, if the well is taken from these defendants.

4.

This defendant admits that it was not in possession of the land in question prior to 1908 and 1910 as alleged in article four of the petition, but neither denies nor admits as to the possession, ownership, right or title or interest as to any other defendant.

5.

This defendant denies article five of the petition, except that it did drill a well thereon and extract small quantities of oil therefrom, an accurate and itemized account and statement of which will be furnished the Court at the trial of this suit, for information of all concerned. Further answering article five, this defendant says it made the locations for this well on this land and drilled same,
9 in perfect good faith, believing that it had a good title thereto, and that it was not trespassing or infringing the rights of any one, or of the Government. Further answering this article, this defendant admits that it sold and market the oil taken from this well, and that defendant, Charles J. Greene, Jr., was paid a royalty, as being and claiming to be the real, true, legal and equitable owner of the fee in said land, and being the lessor of this defendant under warranty, as will appear by reference to said lease recorded in Book 108, page 90 of the record of Conveyances of Caddo Parish, Louisiana, which lease is made part of this answer by reference.

6.

This defendant, denies article six of the petition insofar as it relates to it.

7.

This defendant denies article seven of the petition.

8.

This defendant denies article eight of the petition.

9.

This defendant, answering further says:

That it entered upon said land in good faith, as the bona fide owner, and holder of a lease, warranting this defendant in its use, possession and occupancy and title to the mineral rights in and under said land, and that the defendant, Charles J. Greene, Jr., is liable to it for any sum or amount this defendant may suffer by reason of failure or breach of title or warranty in the premises. That this defendant will furnish this Court with a true statement of the oil produced, saved and marketed by it at the trial, and the price received therefor, and the royalties paid, said statement being now prepared for filing herein.

Wherefore, this defendant, now having fully answered the allegations of this petition insofar as they relate to it, this defendant prays the Court that the defendant, Charles J. Greene, Jr., be called in warranty herein and that he be cited as such to appear and make defense to this action, and that finally, if judgment is entered against this defendant, that it have judgment against the said defendant, Charles J. Greene, Jr., in whatever sum or amount is adjudged against this defendant, together with cost accruing to this defendant herein, and further, this defendant prays that it have judgment for the sum of $8000.00 for the sum and cost price, expended by it in drilling and equipping said well, for the improvements and works placed on said land by it, in the event this Court should hold that judgment should go against this defendant as to title, or right to enter and drill said well and that said well was not its property. That if judgment is rendered herein against this

defendant, for any amount, that in that event said amount be credited to this defendant on the amount due it, and that recourse, judgment and execution be had for this defendant for the residue to which it is entitled for improvements and works placed on said land and premises, and this defendant prays for all orders and decrees necessary to protect its rights in the premises, and for general relief, such as it is entitled to have and receive in equity and good conscience, etc.

AMATEUR OIL CO., INC.,
By H. R. RATCLIFF, Secy.
CLEM V. RATCLIFF,
Attorney for this Defendant.

State of Louisiana,
Parish of Caddo.

Personally appeared the Amateur Oil Company, Inc., by its Secretary, H. R. Ratcliff, who says on oath that from his information and belief the allegations herein and the statements contained herein are true and correct as therein stated.

H. R. RATCLIFF, Secretary.

Sworn to and subscribed before me this 11th day of August, A. D. 1917.

(Seal) D. A. SHARPE, Notary Public.

Indorsed:—Answer of Amateur Oil Co., Inc. Filed Aug. 13, 1917.

11 (PLAINTIFF'S REPLY TO DEFENDANT'S SET OFF AND COUNTER CLAIM).

1.

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, appearing herein and represented by its Solicitor, Robert A. Hunter, Special Assistant to the Attorney General, and renewing and reaffirming the allegations and prayer of the original bill filed herein, for reply to the set off and counter claim included in the answer of the Amateur Oil Co., Inc., denies all the allegations of the defendant's answer, and particularly paragraphs 3 and 9 thereof, relating to the said set off and counterclaim.

2.

Plaintiff further avers that the said defendant is not entitled to any set off or counter claim whatever against plaintiff, because the said defendant entered upon the land described in the bill of complaint herein, drilled a well thereon and extracted and removed oil and gas therefrom, as alleged in the bill of complaint, in bad faith, and said defendant was a wilful and knowing trespasser on said land.

3.

Plaintiff further shows, in the alternative, that even if the said defendant is entitled to a set off or counter claim in any amount, which is denied, the sum claimed by the defendant is excessive and should not be allowed.

Wherefore, plaintiff prays that the set off and counter claim asserted by the defendant be denied and disallowed,

and that plaintiff have relief in the premises, as prayed for in the bill of complaint herein.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

Filed Aug. 18, 1917. W. B. Lee, Clerk, U. S. Dist. Court, West Dist. of La.

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12 (APPLICATION AND ORDER TO FILE INTERROGATORIES AND INTERROGATORIES).

To the Honorable Rufus E. Foster, United States Judge, in and for the Western District of Louisiana:

And now into this Honorable Court, comes the United States of America, appearing herein through Robert A. Hunter, Special Assistant to the Attorney General, and with respect represents:

I.

That plaintiff files herewith interrogatories in writing for the discovery by the Amateur Oil Company, Inc., and the Louisiana Oil Refining Company, defendants, of facts and documents material to the support of plaintiff's cause.

II.

Plaintiff shows that a note is made at the foot of said interrogatories stating which of the same each of the parties is required to answer.

Wherefore, plaintiff prays for an order allowing the filing of said interrogatories; that service thereof be made upon said defendants, and that they be required to answer the said interrogatories separately, fully and in writing and under oath, within fifteen days after service thereof, all as provided by Rule 58 of the Equity Rules.

Plaintiff prays for all orders necessary in the premises and for general relief.

ROBERT A. HUNTER,
Special Assistant to the
Attorney General.

13 ORDER.

The foregoing application being considered, it is ordered that plaintiff be, and is hereby allowed to file the annexed interrogatories, and that said interrogatories shall be answered within fifteen days after they have been served, and shall be answered separately and fully and the answers shall be in writing, under oath, and signed by the party interrogated.

It is further ordered that the interrogatories addressed to the Amateur Oil Company, Inc., and the Louisiana Oil Refining Company shall be answered by them through their proper officer, or employee, who has knowledge of the facts inquired about.

It is further ordered that service of said interrogatories be made in the manner provided by Rule 58 of the Equity Rules.

Thus done and signed this 18 day of February, 1918.

RUFUS E. FOSTER,
United States Judge.

(1).

State who drilled the well known as Greene No. 5 on the land in controversy in this case.

(2).

State when the said well was commenced, when it was completed, and how long and by whom same was operated.

(3).

Did said well produce oil, and was said oil or the proceeds of the sale thereof converted to the use and benefit of the defendants in this cause?

(4).

During what period was said well operated in the production of oil, and when, if at all, did it cease to produce oil?

(5).

State the total production of oil from the said well (a) up to July 31, 1917, and (b) from July 31,
14 1917, to January 1, 1918.

(6).

State whether or not the said well was operated in the production of oil as an entity, or in connection with other wells on the same or different tracts of land.

(7).

Was a separate and complete record kept by the Amateur Oil Company, Inc., and the Louisiana Oil Refining Company of the oil produced by said well? If so, state how, and in what manner said record was kept.

(8).

If the production as given by you in your answer to the bill of complaint and in your answers to the preceding interrogatories is based upon an estimate of the quantity of oil produced by well in suit, in connection with other wells not in suit, or if you have stated that said production is estimative and not exact, then state (a) the total production of all wells operated in conjunction with the well in suit, naming and giving the location of such other wells, and (b) the manner in which you arrived at, or figured the production of the well in suit.

(9).

State the total market value of the oil produced by the Amateur Oil Company, Inc., and the Louisiana Oil Refining Company from the land in controversy, and say whether or not the value as given by you in your answer is exact or approximate, and furthermore, state upon what the value as given is based.

(10).

Is it not a fact that by deed recorded May 5, 1917, in Book 115, page 411 of the records of the Parish of Caddo, Louisiana, the Amateur Oil Company, Inc., transferred to the Louisiana Refining Corporation, the claims, interests and leases asserted by said Amateur Oil Company, Inc., in and to the land in controversy in this suit?

15 (11).

State what relation, if any, exists, or existed, between the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation.

(12).

State whether or not the well in controversy in this cause was operated at any time by the Louisiana Oil Refining Company, or the Louisiana Oil Refining Corporation, and if so, say how long said well was operated and how much oil it produced during such period.

(13).

State whether or not the Louisiana Oil Refining Company is engaged, and was engaged at the time said oil was taken from the land in suit, in the manufacture and sale, as well as the production of oil, and also state whether the oil taken by it from the land in controversy was sold to other persons, or corporations, or was manufactured by it into products of oil.

(14).

State to what person or Company the production of the well in suit was sold during the time that same was operated.

(15).

State the quantity and value of the oil extracted from the land in controversy which was sold by the producers thereof to the purchaser or purchasers thereof.

(16).

What was the total price received by the Amateur Oil Company, Inc., for all the oil produced by the well in controversy?

(17).

What was the total price received by the Louisiana Oil Refining Company for all the oil produced by the well in controversy.

(18).

What was the quantity and value of the oil taken away and removed from the property in controversy by the Louisiana Oil Refining Company?

16 (19).

Is it not a fact that an agent, representative, or employee of the Louisiana Oil Refining Company went upon the land in controversy at the time of any pipe line run, or runs, for the purpose of gauging the quantity of oil transferred from the tank, or tanks to the pipe line of said Louisiana Oil Refining Company, and did not said gauger measure, or ascertain, the amount of oil run from said tank, or tanks, to said pipe line? If the amount of oil purchased by the Louisiana Oil Refining Company from the Amateur Oil Company, Inc., out of the production of the land in controversy was not ascertained by a gauger, in the manner above indicated, then state how the quantity of oil so produced was measured or ascertained.

(20).

What are the principal products manufactured from petroleum, or crude oil?

(21).

State the total value, either exactly if you know, or approximately, if you do not know exactly, of the pro-

ducts manufactured by the Louisiana Oil Refining Company from the oil extracted from the land in controversy.

(22).

State the total profits made by you (a) from the sale of any or all of the crude oil extracted from the land in controversy, and (b) the profits made by you from the manufacture and sale of the products of said crude oil.

(23).

How much money was paid by you as royalty to any of the other defendants herein, out of the proceeds of sale of oil taken from the land in controversy, and state the amount of such royalties, which you are now holding, if any, pending the result of this suit, as well as the names of the persons to whom said royalties were paid, or for whose amount they are now being held.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

17 Note: The Amateur Oil Company, Inc., and the Louisiana Oil Refining Company are required to answer, separately, each of the foregoing interrogatories.

Indorsed:—Application and Order to File Interrogatories and Interrogatories to be Answered by The Amateur Oil Company, Inc., and the Louisiana Oil Refining Company. Filed Feb. 20, 1918.

United States District Court, Western District of Louisiana.

Wednesday, Shreveport, La., February 27, A. D. 1918.

Court met pursuant to adjournment and was ordered opened.

Present and presiding: Judge Rufus E. Foster, U. S. Judge.

United States of America,
vs. No. 1155 In Equity.
Charles J. Greene, et al.

This cause came on this day to be heard according to previous assignment, upon the Motions to Dismiss heretofore filed herein by the defendants, Robert A. Hunter, Esq., Special Assistant to the Attorney General, appearing as Solicitor for the Complainant and Mr. Leon R. Smith, appearing as solicitor for the defendants. The said Motion was argued, submitted and overruled by the Court, to which ruling of the Court, the defendants reserved a Bill of exceptions.

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19 THE ANSWER OF CHARLES J. GREENE, JR., TO THE BILL OF COMPLAINT IN THE ABOVE NUMBERED AND ENTITLED CAUSE.

Now comes Charles J. Greene, Jr., and reserving his rights under his motion to dismiss filed in this cause, for answer thereto says:

I.

That he denies that the plaintiff, on the 15th day of December, 1908, was or since was, or now is, the owner, as part of its public domain of that certain tract of land designated in the bill of complaint as Lots Numbers Two (2) and Three (3) of Section Twenty-seven (27) in Township Twenty (20), North, of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Louisiana, containing sixty-five and seventy-seven hundredths acres, as shown by a plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office, and ex-officio Surveyor General for the State of Louisiana, purporting to reflect a survey of lands in Township Twenty (20) North, Range Sixteen (16) West, aforesaid, made under the direction and with the approval of the Secretary of the Interior of the United States, alleged at the time of, and prior to such survey, to be unsurveyed lands of the United States.

Defendant further denies that the plaintiff on, or prior to, the aforesaid date was, or since was, or now is, the owner and entitled to the possession of the aforesaid described land, or of any part thereof, or of any of the oil, petroleum, gas and other minerals therein contained.

Defendant shows that there is not now, nor was there, any such tract or tracts of land known as Lots Number Two (2) and Three (3) of Section Twenty-seven (27), in Township Twenty (20), North of Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing sixty-five and seventy-seven hundredths acres, as set out in the bill of complaint herein, and that the purported survey showing such lots, is illegal, null and void, and the execution and approval thereof, beyond the power,

jurisdiction, control or authority of the General Land Office of the United States, for the reason that the said tracts of land were not, at the date of said survey, in the ownership of the United States, but were in private ownership, as will be hereinafter particularly shown.

II.

Defendant denies that the President of the United States, on December 15, 1908, in order to conserve the public interest, and in aid of legislation as might be proposed, recommended and enacted by and through the Secretary of the Interior, withdraw from settlement and entry, and from all forms of appropriation, all the public lands in Township 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian. Defendant admits that the Secretary of the Interior did by an order dated December 15, 1908, pretend to make such withdrawal.

Defendant denies the said order of withdrawal, if made under legal authority, which is denied, included and embraced, or purported and intended to include and embrace, the lands involved herein, for the reason and inasmuch as aforesaid, said lands at the date of said withdrawal, formed or was, no part of the public domain of the United States, but was, on or prior to, and since said date, and now is, in private ownership, as will be hereinafter shown. Defendant further admits that the President of the United States, by and through the Secretary of the Interior by executive order, and under special authority, conferred by the Act of June 25, 1910, entitled an Act "to authorize the President of the United States to make withdrawal of public land in certain cases," ratified and confirmed and pretended to continue in full force and effect the previous pretended order of withdrawal of December 15, 1908, insofar as it affected

lands as part of "Petroleum Reserve No. 4", but defendant denies that the tracts of land, in controversy herein, were involved or included, or if so included, they were illegally, wrongfully and erroneously, so included, in said purported order of withdrawal,—for the reason that at the date of said order of withdrawal, and since, and prior thereto, the ownership of said tracts of land were not in the United States.

Defendant admits that neither of said Orders of withdrawal have been officially vacated, and that they are still in full force and effect, if they were valid when made, but denies that said orders of withdrawal, in any manner affect the tract or tracts of land, in controversy, inasmuch as said tracts or parcels of land, at the respective dates of said orders of withdrawal, were not included in said orders, or either of them, nor were such tracts or parcels of land in the ownership of the United States.

III.

Defendant denies that it entered upon and took possession of the property herein involved, and described in Article 1 of the bill of complaint, in violation of the rights, or of any right or rights, of the United States, plaintiff herein, or contrary to its laws, and or without any valid title, lawful right or authority, or in bad faith; but avers that he is the legal owner of said tracts or parcels of land. Defendant avers that he executed a mineral lease or contract which by mesne assignments passed to the Amateur Oil Company, Inc., under which the said Company entered upon and took possession of said property for the purpose of drilling and developing the same for oil or gas, and the extraction therefrom of said
22 minerals, and that the said Amateur Oil Company, Inc., did drill one well known as "Greene

No. 5" on the tracts of land referred to in Article 1 of the bill of complaint, and produced therefrom oil, the amount and value of which oil well will be hereinafter more specifically set forth.

IV.

Defendant says that all of the allegations of Article IV of the bill of complaint are irrelevant, immaterial and not pertinent to the issues of this cause, for the reason, and inasmuch as aforesaid, the property, or tracts or parcels of land herein involved, as not nor were they at any of the dates referred to, the property of the United States, and that the Amateur Oil Company, Inc., the sub-lessee of defendant, or either of them, do not claim or assert, title or ownership to or claims or privileges on said property under any discovery of oil, gas or other minerals under the mining laws of the United States, but that defendant as the true and lawful owner of said land, has executed a mineral lease or contract which by mesne assignments passed to the Amateur Oil Company, Inc., and that under said mineral lease or contract the said Amateur Oil Company, Inc., asserts the right and privileges of exploiting and developing said tracts of land herein involved, as forming a component part of the lands described in the mineral lease or contract executed by this defendant which passed by mesne assignments to the Amateur Oil Company, Inc., and that defendant claims and asserts, and for some time past, and since, has ever claimed and asserted title and ownership thereto, under a patent issued by the United States to this defendant of date of ....., as will hereafter be more fully set forth.

V.

Defendant denies that the mineral lease under which oil is or was being extracted from the land herein involved, was under color of a pretended lease, but to the contrary, avers that its sub-lessee, the Amateur Oil Company, Inc., did enter on said property, herein involved, and took possession thereof, in good faith, under
23 and by virtue of a good, legal and valid mineral lease executed by defendant which by mesne assignments passed to the said Amateur Oil Company, Inc., of date of ....., for a valid and sufficient consideration, and for a part, or share, or royalty, of the oil produced and saved from the premises described in said lease, in the manner as is in said lease provided.

VI.

Defendant denies the allegations of the plaintiff, that he nor his lessees had, or have, no right, title or interest in the lands involved herein, but avers that he, defendant, is the true and lawful owner of said land, and that the oil produced and saved therefrom by its sub-lessee, the Amateur Oil Company, Inc., which will be hereinafter shown, inured to the benefit of the Amateur Oil Company, Inc., and of defendant, and was lawfully sold for the account of the Amateur Oil Company, Inc., and defendant under the provisions and conditions of the mineral lease aforesaid in the proportion, and in the manner, as will be hereinafter set forth.

Inasmuch as gas was not produced from said land, defendant makes no statement therefor.

navigable body of water, was and is the boundary line of said Fractional Northwest Quarter of Section 27, Township 20, Range 16, of Caddo Parish, Louisiana, aforesaid, and that the same was not bounded by any meander line; the actual boundary line of said Fractional Northwest Quarter of Section 27, as patented by the United States to defendant, bordering on said navigable body of water, extended and was and is bounded and limited, by the ordinary or mesne high water of said Ferry Lake, at the time of the admission of the State of Louisiana into the Union, leaving no land in the ownership of the United States between said meander line and the ordinary high water line of said lake, or navigable body of water, and that the Department of the Interior was without jurisdiction, power, or authority to cause said tracts of land, in controversy, to be surveyed.

Defendant avers that the original survey, executed by A. W. Warren, Deputy United States Surveyor in 1839, correctly delineated the high lands above the mesne high water mark of Ferry Lake at the date of his survey.

X.

Defendant avers that the United States through its legally constituted authorities, has prior to the bringing of the instant suit, disclaimed any ownership, claim or interest in and to the lands in controversy.

Defendant avers that the Director of the General Land Office of the United States wrote to the Secretary of the Interior in 1908 the following letter:

"November 6, 1908.

"The Honorable,
The Secretary of the Interior,
Sir:

"In connection with my letter of October 24, on the subject of the wanton waste of natural gas in the
26 Caddo oil fields in northwestern Louisiana:

"I have the honor to advise you that a search made by the General Land Office shows that lands remaining in Federal ownership in the neighborhood of this oil field are as follows: * * * * Township 20 North, Range 18 West; NE¼ SE¼ Sec. 1; SW¼ of SW 1/4 Sec. 3 (For S½, SW¼ Sec. 3 see "C" Aug. 24, 1905). * * * *

Very respectfully,

GEO. OTIS SMITH,
Director."

Defendant avers that the United States as above shown has heretofore disclaimed any title to the lands in controversy and that it has only been since the discovery of oil upon the said lands that the United States has laid any claims to the same, and that at this late date after disclaiming ownership to any lands other than certain specific tracts in Township 20, Range 16 West, that it is inequitable for the United States to change its position after private parties had relied upon such disclaimers on the part of the United States, and improved the said lands in the utmost good faith and belief that defendant was the true owner, and that his lessee or sub-lessee would be protected under leases from your defendant, in having made the said land valuable, by expending large sums of money upon the same. That the suit brought by the United States is a very stale demand and not favored in equity.

XI.

Defendant avers that he, as aforesaid, leased the said tracts of land involved herein, which by mesne assignments passed to the Amateur Oil Company, Inc., whereunder there was granted and conveyed to the said lessees the right and privilege of exploiting and developing the same for oil and gas, and other minerals, for the consideration of drilling a well for oil or gas within 30 days from the date of said lease, and right to exploit
27 the same for the purposes as are explicitly conditioned and provided in said mineral lease.

Defendant avers, that under said lease its sub-lessee drilled on the leased premises—that is, on the Fractional Northwest Quarter of Section 27, Township 20, Range 16 West, and on that part of the lands now in controversy—one well. That on the lands in controversy only one well has been drilled, namely, "Greene No. 5", and that it produced 1388.38 barrels of oil of the value of $2607.00, and was thereafter abandoned.

That the proceeds of the oil from "Greene Well No. 5" was distributed as follows: Louisiana Oil Refining Company 709.35 barrels of oil, sold for and at the value of $1282.54, and by the Louisiana Oil Refining Corporation 679.03 barrels at the value of $1324.52 and defendant's Royalty Oil sold for $323.37. Louisiana Oil Refining Company paid defendant $160.32 and the Louisiana Refining Corporation the sum of $163.05.

Defendant in the alternative specially avers that its sub-lessee, the Amateur Oil Company, has expended in the cost and expense paid by it for the drilling and equipping said well, "Greene No. 5", the sum of $8000.00, and that the operating expenses incurred and paid in maintaining said well and handling its production amounts

to the sum of ....., making a total cost and expenditure of .....

XII.

Defendant further avers that he acted in good faith, and in the belief that the title and ownership of said land validly and legally vested in him, and that so believing he has held the possession of said lands for years; that he leased the said lands, in controversy, in good faith, and his sub-lessee by mesne assignments has entered upon the lands and drilled in absolute good faith the well "Atlanta Well No. 5" upon the land in controversy, under a good and valid lease by mesne assignments from defendant; and that, in the event it should be held that the plaintiff is the owner of said tracts of land now in controversy that defendant's sub-lessee, the Amateur Oil Company, Inc., should be, and is, entitled to be
28 reimbursed the entire cost and expenses of drilling and equipping said well "Atlanta Well No. 5", and the expense of operating and maintaining said well, as aforesaid, before your said defendant can be held liable for any oil extracted therefrom.

Wherefore, having made a full and complete answer to all the matters and things contained in the bill of complaint, this defendant prays the said bill be dismissed, and for judgment for its costs in this behalf incurred. In the alternative, in the event this Court should hold that the plaintiff is the owner of the tracts of land, or property in controversy, this defendant prays that its sub-lessee, the Amateur Oil Company, Inc., may be adjudged not liable to plaintiff on account and for the oil taken or extracted from said property, until plaintiff shall have reimbursed defendant's sub-lessee, the Amateur Oil Company, Inc., for the costs and expenses of drilling, equip-

ping and maintaining the said well from which oil was produced and saved, and all incidental charges in handling, preserving, storing, transporting and selling of said oil, and, that in any event, if this relief be refused or denied, that it be adjudged that the costs and expenses of drilling, equipping and operating said well, being in excess of the total value of the oil produced therefrom, that this defendant or its co-defendants, or either of them, are not liable to the plaintiff in and for any amount.

And, finally, defendant further prays for all necessary and proper orders in the premises and for general, special and equitable relief, and for all such as it may in equity and good conscience be entitled to from the facts and the evidence which may be adduced on the trial hereof.

S. M. COOK,
BLANCHARD & SMITH,
Solicitors for Defendant,
Charles J. Greene.

Indorsed:—The Answer of Charles J. Greene, Jr., to the Bill of Complaint. Filed Mar. 18, 1918.

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29 (ANSWER LOUISIANA OIL REFINING CO. TO INTERROGATORIES).

Now into this Honorable Court comes E. R. Ratcliff, who was President of the Louisiana Oil Refining Company, and reserving all of its rights under the pleadings heretofore filed, for answer to the interrogatories propounded to it answers as follows:

Int. No. 1. The Amateur Oil Company.

Int. No. 2. Unable to give this information. Operated by the Louisiana Oil Refining Corporation since May 15, 1917.

Int. No. 3. Yes, save as to the Louisiana Oil Refining Corporation which is not a defendant.

Int. No. 4. Not operated since November, 1917.

Int. No. 5. (a) 835.81 barrels; (b) 552.57 barrels.

Int. No. 6. As an entity.

Int. No. 7. Louisiana Oil Refining Company pipe line, run tickets, and the run tickets of the Louisiana Oil Refining Corporation run tickets.

Int. No. 8. The well was treated as an entity as answered in Interrogatory No. 6.

Int. No. 9. $2607.06 actual value at market price at time oil was run.

Int. No. 10. Yes, but the deed was recorded May 15, 1917.

Int. No. 11. The Louisiana Oil Refining Corporation bought the assets of the Louisiana Oil Refining Company.

Int. No. 12. The well was never operated by the Louisiana Oil Refining Company. Since May 15, 1917, it was operated by the Louisiana Oil Refining Corporation. It produced 679.03 barrels.

Int. No. 13. The Louisiana Oil Refining Company, while in existence, was engaged in selling, refining and the production of oil. The Company bought this oil for manufacturing purposes.

Int. No. 14. The Louisiana Oil Refining Company bought the oil from the Amateur Oil Company. The Louisiana Oil Refining Corporation used the oil for manufacturing purposes.

Int. No. 15. 1388.38 barrels. $2607.06.

Int. No. 16. $1122.22.

Int. No. 17. Oil was not sold by the Louisiana Oil Refining Company in the crude form, but as refined oil, which value at this time it is impossible to estimate.

Int. No. 18. 709.35 barrels by the Louisiana Oil Refining Company $1282.54. 679.03 barrels by the Louisiana Oil Refining Corporation $1324.52.

Int. No. 19. Yes.

Int. No. 20. Gasoline and kerosine.

Int. No. 21. Impossible at this time to tell, as this oil was used with thousands of barrels of other crude oil, and refined together.

Int. No. 22. Impossible to furnish this information. See answer to Int. No. 21.

Int. No. 23. The Louisiana Oil Refining Company paid C. J. Greene, $160.32. The Louisiana Oil Refining Corporation paid C. J. Greene $163.05.

E. R. RATCLIFF.

31 State of Louisiana,
Parish of Caddo.

E. R. Ratcliff, being duly sworn, deposes and says:

I was the president of the Louisiana Oil Refining Company during the time the Company had dealings with the Amateur Oil Company and C. J. Greene.

I have read the foregoing answers and they are true and correct.

Sworn to and subscribed before me on this the 23 day of March, A. D. 1918.

LEON R. SMITH,
Notary Public.

Indorsed:—Answer of Louisiana Oil Refining Company to Interrogatories Propounded to It. Filed Mar. 25, 1918. B.

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32 (ORDER APPOINTING E. H. RANDOLPH SPECIAL MASTER).

This case now being at issue, the Court considering that the services of a Master are necessary to aid the Court and economize its time, and for the purpose of expediting the final hearing of said cause, the Court of its own motion appoints Edward H. Randolph, Esq., Special Master herein.

It is further ordered that this case be referred to said Master to take the evidence and report his findings of fact and conclusions of law therein.

The said Special Master is authorized to set the case for hearing at such time and place as in his opinion may

be most convenient to all parties, and he is authorized to hear the evidence within the jurisdiction of the Court or elsewhere as may be advisable.

RUFUS E. FOSTER,

Judge.

March 29, 1918.

Indorsed:—Filed Mar. 29, 1918.

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33 (REPORT OF SPECIAL MASTER).

In United States District Court, Western District of Louisiana.

Nos. 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1162, 1163, 1164, 1165, 1167, 1168, 1170, 1171, 1172.

To the Honorable Rufus E. Foster, Judge, U. S. District Court, Western District of Louisiana:

May It Please Your Honor:

Having been appointed by Your Honor Master in Chancery in the above cases to take the evidence and report findings and conclusions of law thereon, and after having heard the testimony and arguments of counsel, I beg to make this my report. In considering the two cases I have found they naturally group themselves into two classes which I have designated as class "A" and class "B."

Class "A" includes the following cases:

United States vs. C. W. Lane, et al, No. 1153.
United States vs. Chas. J. Green, Jr., et al, No. 1155.
United States vs. Jeems Bayou Hunting & Fishing Club, et al, No. 1157.
United States vs. Gulf Refining Company of Louisiana, No. 1158.
United States vs. W. H. Enders, et al, No. 1160.
United States vs. Southwestern Gas & Electric Company, et al, No. 1162.
United States vs. J. M. Walling, et al, No. 1163.
United States vs. Mrs. Jessie M. La Robadierre, et al, No. 1164.
United States vs. A. C. Loucks, et al, No. 1165.

Class "B" includes the following cases:

United States vs. W. W. Green, et al, No. 1154.
United States vs. Henry Hunsicker, et al, No. 1156.
United States vs. Arkansas Natural Gas Co., et al, No. 1159.
United States vs. R. B. Norvell, et al, No. 1167.
United States vs. W. H. Mathews, et al, No. 1168.
United States vs. Dillard P. Eubank, et al, No. 1170.
United States vs. Mrs. Lydia H. McMullen, et al, No. 1171.
United States vs. Sam Mason, et al, No. 1172.

In Class "A" the defendants deny the title of the United States. In Class "B" they admit the title to the lands in dispute are still in the United States, but set up that they in due course according to law made mineral locations thereon of which they cannot be divested.

34

First in consideration I take up Class "A" suits of which the case of United States vs. Jeems Bayou Hunt-

ing & Fishing Club, et al, No. 1157, is most typical of the contentions raised by the United States and the defendant in Class "A" suits. Concisely stated in the class "A" suits the contention of the United States is that the ownership of the lands in dispute has never at any time passed from it; that in point of fact they were in the category of unsurveyed public lands until December, 1916, and that since that survey no alienation has been made by the government and that defendants are without any muniment of title.

On the contrary the defendants deny that the lands were in the catigory of unsurveyed lands prior to March 1917 and aver that prior to that date, to-wit: 1839, their lands were surveyed by A. M. Warren, Deputy United States Surveyor, mapped and filed in the Federal Land Office, the land sold and United States Patent issued therefor, and that the defendants have good title derived by mesne conveyances from the original patentees. In the survey of 1839 of Township 20, the government claims that the surveyor left out of the survey 987.77 acres, 248.87 acres of which is involved herein and to which the government claims defendant has no title. The above are the out-standing contentions. There lands are all border lands lying on Ferry Lake and are all in Township 20, Range 16 West Louisiana Meridian, and lie in the following sections of said township, to-wit: three, four, five, eight, nine, ten, twelve, thirteen, fifteen, sixteen, twenty-three, twenty-four, twenty-five, twenty-seven and thirty-two.

In addition to the above general statements of the issues made by defendant there are in the pleadings such issues as denial of the right to make a re-survey of Township 20 on the ground that the order therefor directs the survey from Range 10 to Range 11, which is not inclusive of range 16; also that lands in controversy

were in character swamps and passed to the State; and that the alleged unsurveyed lands in this township lying on the Lake, were formed by relictions and passed to the defendant holders as riparian proprie-
35 tors.

Altho such contentions were set up by defendants pleadings they were as the trial progressed, in a number of the cases, practically abandoned and the controversy settled down on the pivot of whether the lands in controversy, at the time in 1839 when a survey of this township was made by the government were in point of fact included; or if not in point of fact included in the 1839 survey, yet the government should be held, as respects defendants and their authors in title, in law as virtually having thru its own surveyor and his maps held out that all lands in question at that date were included, and therefore should not be permitted at this date to revise its representation thru its surveyor and maps to the prejudice of defendant, even tho the lands in controversy were in place and not included in map. This would reduce the controversy to a question of law. To make this clear I will take up the cases seriatim and first the case No. 1157 of United States vs. Jeems Bayou Hunting & Fishing Club, et al, as being the most illustrative of the contentions.

United States
vs. No. 1157.
Jeems Bayou Hunting and Fishing Club, et al.

This case involves lots 8, 9 and 10 aggregating 85.22 acres of Section 10, Twp. 20, N. R. 16 West and is shown on plat No. 11 of plaintiff's offering, colored red. This plat is called a supplemental plat of Twp. 20 N. Range 16 West made by A. D. Kidder and associates,

United States Surveyor in 1916, and approved Marcy [March] 28, 1917. This same plat illustrates the government contention that the original survey of this township 20 by Warren, Government Surveyor in 1839 (Warren's map being plaintiff's offer 3, filed in evidence) omitted 565.98 acres of land which were in place at the time and omitted by Warren and therefore, as the Government contends, remained legally as unsurveyed Government Land even after Warren made his map (p. 3) and returned it with his field notes to the surveyor general's office. The omitted areas are shown on Plat 11 and appear all around the
36 border of Ferry Lake, but the greatest area omitted by Warren in the original survey lies in Sec. 10. As stated already the original survey and maps of this land by the government was by Warren in 1839 and a replica of this map is in evidence (P. 3). This survey shows the area in the southwest fractional quarter, Sec. 10, as containing 55.88 acres and represents section 9 lying west of section 10 as being no land at all. As a matter of fact subsequent surveys made by Bristol in 1871 and by Kidder in 1916 confirmed the fact that at the time of Warren's survey the part of Sec. 10 represented on his map as rather a long and narrow peninsular and as containing 55.88 acres actually contained 129.60 acres additional and that Warren's map showing section 9, lying west of section 10 as water, actually had at that time 66.29 acres, entirely omitted from Warren's survey and 28.33 acres in Section 16 which Warren's survey and map ignores altogether.

This brings me to the consideration of the fact claimed by the Government, to-wit: Were the lands in section 10 aggregating 129.60 acres, in section 9 aggregating 66.29 and in section 16 aggregating 28.33 acres actually in esse as high lands at the time of Warren's

survey. To determine this matter the United States Government ordered a resurvey in 1913 and 1914 and an extension survey in 1916 and 1917 of the lands in township 20, Range 16 West. This work was done under their instructions by Arthur D. Kidder, supervisor of surveys. The re-survey was made in 1913 and 1914 and the extension survey in 1916 and 1917. In the course of this survey Mr. Kidder and his associates re-established and reproduced the survey made by Warren in Township 20 N. R. 16 West and made the official plats and maps herein filed (all approved by the department of the Government Land Office). On the trial before me, it is specially admitted in suits herein Nos. 1153, 1158, 1162, 1163, and 1164 that these surveys, maps and plats by Kidder were executed according to the instructions of the Government Land Office and that such plats correctly re-established and reproduced the survey made by Warren in Township 20, N. R. 16 West in strict accordance with the original survey.

Altho in this suit there is no admission in the record to the same effect, yet in the arguments, oral and in brief, there is no attack on the accuracy of the
37 map of Kidder. Much interesting testimony was adduced by the Government to prove its contention that the lands in these suits were in actual place as high lands when Warren made his survey but were ignored by Warren in making his survey and treated as non-existant by him and also to prove that in the section to the west and south where Warren's map and field notes represent that the shore of Ferry Lake lay, there was in point of fact high lands with the actual shore line distant 2700 and 2500 feet at furthest and 725 to 990 feet nearest.

This testimony was furnished not only by Kidder and his associates who actually did the work, but also

by three distinguished scientists, one a Geologist, Prof. Frank Leverett of the University of Michigan, and two geologists, Prof. Lionel J. James of the Dept. of Agriculture of the United States and Dr. Henry C. Contes, Professor of Plant Ecology in the University of Chicago.

One of the first things to determine in reproducing the Warren survey and to show the exact status of the land and water at that period and the period of 1812 when Louisiana came into the Union was to determine the mean high water mark of the Ferry Lake at that period or the contour line, as it is called, of the lake.

This was done by a study of the wave action on the border of the lake by the Geologist which consisted of shore marks and also of a study of the soil in the bed of the lake and on the upland borders; also by a study of the tree growth on the shore and the lake and the various timber belts on the shore consisting of cypress; above this, overcup oaks and other trees which would not grow upon lands permanently covered by water. In this recognizance work they directed stakes to be set at the margin between the cypress timber and overcup oaks. It is established by Kidder's testimony that the high water elevation of Ferry Lake in 1839 (the date of Warren's survey) and in 1812 when Louisiana was admitted into the Union, was 173.09 feet above gulf level. Certain birth marks as to the high water elevation of Ferry Lake with reference to the Gulf Level (or sea level) have been established by Army Engineers on Red River and in this township 20 dating back as far as ..... and these were identified and used by Kidder in locating the 173.09 contour of the lake and the contour actually made by the surveyors around the entire border of Ferry Lake. When this contour was made it was found to practically coincide with 173.09 acres high water level already independently located and staked by

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the Geologist and Ecologists. It was also found that Warren's survey was actually made by him with reference to this same level and contour. In returning the lines of Warren's survey following Warren's field notes and directions, Kidder found that in the termination of all the section lines to the lake shore Warren had stopped at the 173.09 level and also that in retracing many of Warren's meander lines on the border of the lake, he (Warren) had run them either exactly or approximately on the 173.09 contour (which had already been located and worked out by Kidder and the scientists as the shore before the above verification by Warren's own date). The 173.09 contour is confirmed by the Louisiana-Texas Boundary Commission in 1841; also by Moore's survey in 1846 and Boyd's survey of 1854, dealing with certain other lands on Ferry Lake.

A more detailed reference to the evidence and discussion thereof on this point might be made, but the fact that Warren recognized the 173.09 elevation as existing at the time of his survey is expressly made in the suits herein, Nos. 1153, 1158, 1162, 1163, and 1164, and is not seriously denied, since all evidence is in, by the other defendant litigants. The admission on this matter finally made in the above suits is as follows:

"2. That the contour line of 173.09 feet above Gulf level established by the said Arthur D. Kidder, Supervisor of Surveys, as the mean high water elevation of Ferry Lake in 1812 when Louisiana was admitted into the Union, and in 1839 when A. W. Warren made his survey of Township 20, North of Range 16 West, was in reality the mean high water elevation of Ferry Lake and James Bayou, at such dates, and that the meander line of Ferry Lake and James Bayou, as run by said Kidder, follows said contour of 173.09 feet.

"3. That all of the tracts in controversy in these suits lie above the mean high water elevation of Ferry Lake as it existed in 1812 and 1839.

39 "4. That the various tracts of land lying between the meander line of Ferry Lake and James Bayou as run by the said Arthur D. Kidder, and the line represented as a meander line upon the plat of said original Warren's survey, hereinabove referred to, including the tracts in controversy in these consolidated causes, were in 1812 and 1839, at all times since said date, and now are, lands in place and of the same character, geological formation, and quality, as the lands surveyed by said Warren, as aforesaid: that said tracts of land are now and were in 1812 and 1839, and at all times since said dates, what is known in this locality as hill land, covered with native forest trees and vegetation characteristic of hill land, and that all of said lands were at the dates mentioned and at all times subsequent thereto uplands in character and existed as such at the time of the said Warren's survey and in 1812.

"5. That the various tracts of land embraced in the extension survey of the said Arthur D. Kidder, Supervisor of Surveys, and represented upon the plats aforesaid, including the property in controversy in these consolidated causes, were not formed by accretion, or by the recession or reliction of the waters of Ferry Lake or James Bayou since 1812." (See stipulation of counsel in cases mentioned, pages 2 and 3.)

On their basis of 173.09, Kidder and his associates were able by taking Warren's field notes, to track him over the exact terrain which he walked in 1839 and found beyond a doubt in this section that when Warren

reached nearly the point of the land shown on his map as a narrow peninsula in the southwest quarter of section 10 in township 20, north range 16 west, he carelessly left the shore line of the lake, running a short distance to the west on a line through highlands well timbered, leaving the lake shore 725 feet south of him and then turning approximately north, ran his line through high lands without reference to the actual shore line of the lake which in point of fact was at that time at least 2770 feet to the west of his survey. By so doing he ignored the presence of the land in question in this suit which at that time was in place and most of it seven feet higher than the land actually surveyed by him and made a map showing 55.88 acres as containing all the land in the alleged southwest fractional quarter of section 10. This is well illustrated by map 31 of plaintiff in evidence. The land so omitted was topographically surveyed, its elevations taken by Kidder and associates and map of it shows it to have been even above the 180 foot contour (which was the high water stage at that period of Red River and Ferry Lake) and none of it below the 173.09 level on which Warren based his survey.

It is also, by the scientists already mentioned, proven that this land so left out by Warren was at the time of his survey well timbered high land with a growth on it of pine, oak and red gum, etc. It is proven by the scientists that this same sort of growth was in this land as far back as 1800. From a comparison of Warren's map, plaintiff 3, in evidence, with Kidder's survey as shown by Map 31 Plaintiff's evidence, page 9, it is apparent that the little peninsula mentioned by Warren as the fractional southwest quarter of section ten does not represent either the area or shape of the land, certainly in place at the time of his survey—nor does it even approximate the real area and shape. It is im-

possible to accept his southern or western line as a real meander of the shore. It will be seen from map 31 of Plaintiff's evidence that the lots involved in this suit are far from the total area omitted by Warren in his survey of the western fractional one-half of section ten. The area of the land is 85.22 acres; the other lands omitted by Warren from his survey in this point approximate 118.46 acres plus a body of land lying north of the above land aggregating 280.87 acres surveyed by Bristol in 1871, all of which Warren's map returns as lake.

I find therefore as a fact that this land in question was and is not alluvial nor swamp nor overflowed nor formed by retection, recession or accretion but it was high lands in place in 1812 and 1839.

I find also as a fact that the land in question was not surveyed by Warren in 1839 and should be classed in the catigory of unsurveyed public lands of the United States prior to the survey made by Kidder unless the defense set up by defendant shows a divestiture of the ownership of the government since the Warren survey.

The defendant, the Producers Oil Company, claim under a lease from the Jeems Bayou Hunting & Fishing Club, in 1910, and put down the oil wells on this land (the Texas Company bought the oil produced
41 therefrom from the Producers Oil Co.) The Producers Oil Company therefore is bound to defend the title of the Jeems Bayou Hunting & Fishing Club. A consideration of the same and the special defenses set up is now in order.

The United States issued to S. D. Pitts on April 2, 1860, a patent "to the Fractional Southwest quarter of Township 20, N. R. 16 West, according to the official field notes and plot of survey in the Government Land Office." The Patent stated the land conveyed was 23 acres. As a matter of fact Warren's map represents

the fractional southwest quarter of section 10, containing 55.88 acres (there is a suggestion that Pitts actually intended to buy the southeast quarter of this section which is shown by Warren's map as containing 23 acres.)

But inasmuch as the title calls for the southwest quarter, this fractional southwest quarter according to Warren's field notes and directions actually contained approximately 48 acres (the volume of the 55.88 acres and about 7 acres as shown by Warren's map in this peninsular being in the northwest quarter of Section 10). Pitts got the patent and paid for 23 acres.

As stated in the outset in this opinion, the lots or land in controversy here were not as a matter of fact embrased within the Warren line but lie entirely out of the 48 acres which Pitts actually took under the Warren survey. The Jeems Bayou Hunting & Fishing Club purchased from Pitts and succeeded to all the rights under his patent, no more and no less.

Certain preliminary defenses in this and the other cases were passed on by your Honor and rejected. The contentions in the pleadings that the land in question was swamp and overflowed land and that it was uncovered by a recession of the water and belonged to Pitts and his succession in title as Reparian owners is not pressed; in fact, the James Bayou Hunting & Fishing Club in a suit No. 17707 on the Docket of the District Court, Caddo Parish vs. Levee Board, denied that the land in controversy was ever swamp or overflowed land and also denies "that the same has been formed either in whole or in part since its survey in
42 the long ago." In other words, an admission that the land in dispute was actually in place as high land when Warren made his survey in 1839.

As above stated, I have already concluded that the land in dispute was in place as high land (equally as

high and most of it higher than the land actually surveyed by Warren) when Warren made his survey and I have also found that Warren did not actually survey this land and that his survey which purports to show a narrow peninsula at no point over 400 feet wide with the lake on its western and northwestern boundary in point of fact was not true, that the lake at the time of his survey was over half a mile away and at its nearest point on the south 725 feet distant; besides there were lands in this section and section 3 subsequently surveyed by Boyd and Bristol, which shows in Warren's map as water, which was actually high land in place, aggregating the whole 370.56 acres. In Warren's survey in this township, a grand total of 987.77 acres of high land in place at the date of his survey is shown to have been omitted from his map. Considering this to be true, defendants argue that the Government should be estopped from denying the verity of Warren's map at any time after third parties have bought, much less at this late day.

This leads to the law question involved. After a review of the authorities my opinion is that the Government is not estopped when it is satisfied that there was manifest error or material variation between the traverse line of the Lake represented on a map and the true border of the Lake; but may order a resurvey and treat the land omitted from the first survey, as public land, which has never been surveyed from the public domain.

The Supreme Court of the United States in 142 U. S., 161, states the law thus: as to the rights of the Government when it believes there is error or fraud in the surveys already made: "The power to make and correct surveys of public lands belongs exclusively to the political department of the Government and the action of that department is unassailable in the Court

except by direct proceedings." D. 189 U. S. 35—Do 168 U. S. 589.

The case in 189 U. S. Kernan vs. Murphy, 43 is directly in point, a survey was made by Howe, the U. S. Surveyor, where the meander line was at a considerable distance from a lake. The lake, in fact, existed, but not at the place represented on the plat. The result of the false meander was the omission of a large body of land between the so-called meander and the lake. The department ordered a new survey (as in the case at bar) and parties claiming the omitted body of land enjoined the execution of the survey, but the Court rejected the injunction holding that the department not only has the power to make correction surveys, but "It must primarily determine what are public lands subject to survey and disposal." In a recent case decided by the Supreme Court of the United States, Lee Wilson & Co. vs. U. S., 245 U. S. 24, it is announced: "If in the making of a survey of public lands, an area is through fraud or mistake meanded as a body of water or lake where no such body of water exists, riparian rights do not accrue to the surrounding lands and the land department, upon discovering the error, has power to deal with the meandered area, to cause it to be surveyed and lawfully to dispose of it. Altho the general rule is that a meander line is not usually one of boundary yet this meander line must have certain requirements stated below, and if it does not have those requirements it is a boundary line.

The case of Producers Oil Co. vs. Hanszen, first decided in the Supreme Court of Louisiana, 132 La. 691, and affirmed in the Supreme Court of the United States in 238 U. S. 325, settles the question as to whether Warren's so called meander line in his survey of the southwest quarter of Sec. 10, Twp. 20, R. 16 (the land herein involved lying in that quarter section and

actually in place in 1812 and 1839, as now) is to be treated as a true meander line, or whether it must be treated as a boundary line limiting the patentee to the actual area within the boundary. Both the Supreme Court of Louisiana and the Supreme Court of the United States decided that a surveyor's traverse fails in all respects as a meander line when it was made without regard to a body of water, and does
44 not approximate its contour, or when substantial areas throughout the twp. lying between the so-called meander line and the body of water which it pretends to deliniate, have been omitted. In either case the traverse is a boundary of the adjoining patented lands and reparian rights do not accrue. Tested by this the so-called meander line established by Warren of this section, as above described, does not meet any of the requirements set forth by the Supreme Court of the United States, because:

(1) It is (at the point under discussion) not "an accurate survey of the meanderings of the watercourse."

(2) It does not show "the place of the watercourse and its sinuosities.

(3) It does not "define the sinuosities of the banks or the water."

(4) It is false, erroneous and misleading in that it does not afford any reliable means "of ascertaining the quantity of the land in the fraction, subject to sale, and which is to be paid for by the purchaser," 7 Wallace 272, R. R. Co. vs. Schumier. In 159 U. S., page 40, Howe vs. Smith, it is held that "It is unnecessary to speculate why it was that the surveyor (Warren in

the case at bar) did not survey the omitted land; it may have been a mere oversight, but whatever the reason, the fact is obvious that no survey was made of that body of land." "Altho it was unsurveyed it does not follow that a patent for the surveyed tract (herein the Pitts patent) adjoining, carries with it the land which, perhaps, ought to have been, but which was not in fact surveyed. The patent conveys only the land which is surveyed, and it is clear from the plat and the survey (i. e., the field notes, etc.) that the tract surveyed terminated at a point other than the real bank of the river as the patent carries no land beyond the terminal fixed by the surveyor."

The land actually purchased and paid for by Pitts (as above stated he actually got more than he paid for) was conveyed and covered by the description of courses and distances set forth in Warren's field notes and referred to in the Pitts patent, and the
45 United States is concluded as to such land. Giving the Patentee all of the land in areas stated in the patent and described and contained in lines and distances in such patent and which is all he paid for, protects him and his succession in title and the government should not be concluded by the fraudulent or gross negligence of its surveyor, 193 U. S. 167, Security Land & Ex. Co. vs. Burns (in that case the real lake or water at the point in question was about half a mile away from the pretended meander.)

Again 232 U. S. 452, Gautier vs. Marian, "If the area in question designated and meandered as a lake, was in truth high land susceptible of cultivation, it was as much public lands after the survey as if its true character had been reported by the surveyor, it was merely left unsurveyed (in that case there was no reference in the field notes or plat to the omitted areas) Do. 175 U. S. 300, 185 U. S. 50. In 232 U. S. 186-7, Chapman

& Dewey L. Co. vs. St. Francis Levee Dist., "these public lands are patented as to the official plat of the surveyor returned to the Government Land Office by surveyors, but the notes, lines, landmarks and other particulars appearing on the plat must be considered in interpreting the patent.

The last expression of the Supreme Court in the above case of Wilson & Company vs. U. S. 245, U. S. 24, definitely settle the substantial point in controversy here. "If in the maps of a survey of public lands, some area is through fraud or mistake meandered as a body of water or lake where no such body of water exists, reparian rights do not accrue to the surrounding lands, and the land department upon discovering the error has the power to deal with the meandered area, to cause it to be surveyed and lawfully to dispose of it."

It is impossible therefore to escape the legal conclusion that lots contended for herein must be held to be public government lands, the property of the United States and that neither Pitts under his patent, nor the Jeems Bayou Hunting & Fishing Club nor its
46 lessee the oil companies have any title thereto. So holding, it remains to consider the claims of the government for the oil and other minerals taken therefrom and the form of judgment that should be rendered against the defendant. The Government contends that it is entitled to recover the value of oil extracted from the lots by the defendants on the theory that they are all wilfull trespassers and that the general rule is that the measure of damages for a tortious conversion is the value of the property converted with interest. My conclusion is that defendants herein are innocent of any intent to do wrong and therefore the costs of extracting the oil and other minerals should be allowed, this embraces the cost of drilling and completing the wells and the cost of administering same in

order to deliver the oil at the surface for delivery into commerce. This is the rule announced by our own Supreme Court in the case of Cook vs. Gulf Refining Co., 135 La. 609, and satisfies the equitable principle that no man should enrich himself at the expense of others.

Commonly speaking minerals cannot be approved until brought to the surface and the true owner should undoubtedly be awarded their value at that stage but not until the labor and expense of the person doing the work of bringing them from the bonds of the earth have been allowed where this person is acting in moral good faith tho under a mistaken idea as to the true conditions of the title. On this basis I think the government may recover not only from the oil company, defendants, who developed and brought to the surface the oil, but also from the marketing company who received the oil at the well from the producing company and also from the persons to whom royalties were paid to the extent of such payment, C. C. of La., 2452, Thornton vs. Oil & Gas Co., page 43; 135 La. 990, Elder vs. Ellerbe.

Since all the evidence was put in there is no dispute as to the amount of the oil extracted and marketed from the wells up to June 30, 1917, inclusive. I find as a fact that the amount of oil so extracted by the Producers Oil Co. and delivered to the Texas Company up to June 30, 1917 inclusive, to be 247,348.27 barrels and that its value at the time of the extraction was $293,-234.18.

I find that the cost of drilling and equipping the wells, operating same and delivering the oil at
47 the surface, to be $113,912.45. The difference between these two items is $179,321.73, representing the net value of the production. Of this amount the Producers Oil Co., paid to the Jeems Bayou Fish-

ing & Hunting Club $36,654.27 as royalties, leaving the Producers Oil Co. and the Texas Company the net amount of $142,667.46. These amounts must be returned to the true owner of the land, the United States.

I therefore recommend:

1. That the land in question be decreed to be the property of the United States.

2. That defendants be permanently estopped from transferring on same, or removing any oil or other minerals therefrom, and that they deliver the property to the United States and that the lease of said land by the defendants, Jeems Bayou Hunting & Fishing Club and the Producers Oil Company be annulled.

3. That the United States recover from the Producers Oil Co., and the Texas Company in solido, $142,667.46.

4. That the United States recover from the Producers Oil Co., the Texas Company and the Jeems Bayou Hunting & Fishing Club, in solido, the sum of $36,654.27 for royalties paid by the said club.

5. I recommend further that the rights of the Government be recovered from defendants of the value of all oil produced from the wells on the land since June 30, 1917 inclusive.

No. 1153, United States vs. Lane, et al.
No. 1158, United States vs. Gulf Refining Co., of La.
No. 1162, United States vs. Southwestern Gas & Electric Co., et al.
No. 1163, United States vs. J. M. Walling, et al.
No. 1164, United States vs. Robediere, et al.

The above cases were consolidated for the purposes of trial and the following stipulations of fact were made by counsel for both sides.

1. "That the surveys made herein by Arthur D. Kidder, Supervisor of Surveys, and his associates and assistants, were made under instructions issued by the Commissioner of the General Land Office, as shown by letters of date September 27, 1913, and of December 1, 1916, from Clay Tallman, Commissioner of the General Land Office, to the said Arthur D. Kidder, Supervisor of Surveys, which will be offered in evidence herein by plaintiff, and that said surveys were made conformable to said instructions; that the surveys referred to herein are represented by certain official plats approved July 24, 1916, and March 28, 1917, which will be offered in evidence by plaintiff; that the plats made by the said Arthur D. Kidder, or under his supervision hereinabove referred to, correctly depict the surveys as made by him, and that all the figures, measurements, courses, distances, elevations and topographic features shown on said plats are correct. It is also admitted that the said Arthur D. Kidder, Supervisor of Surveys,
48 correctly re-established and reproduced the survey made by A. W. Warren, Deputy Surveyor, of Township 20, North of Range 16 West, in strict accordance with the said original Warren survey, the said original survey being represented upon the official plat approved August 31, 1839.

2. That the contour line of 173.09 feet above mean Gulf level, established by the said Arthur D. Kidder, Supervisor of Surveys, as the mean high water elevation of Ferry Lake in 1812, when the State of Louisiana was admitted into the Union, and in 1839 when A. W. Warren made his survey of Township 20, North

of Range 16 West, was in reality the mean high water elevation of Ferry Lake and James Bayou, at such dates, and that the meander line of Ferry Lake and James Bayou as run by said Kidder follows said contour of 173.09.

3. That all of the tracts in controversy in these suits lie above the mean high water elevation of Ferry Lake as it existed in 1812, and 1839.

4. That the various tracts of land lying between the meander line of Ferry Lake and James Bayou as run by the said Arthur D. Kidder, and the line represented as a meander line upon the plat of said original Warren survey hereinabove referred to, including the tracts in controversy in these consolidated causes were in 1812 and in 1839, at all times since said dates, and now are lands in place and of the same character, geological formation; and quality as the lands surveyed by said Warren, as aforesaid; that said tracts of land are now and were in 1812 and 1839 and at all times since said dates, what is known in this locality as hill land covered with native forest trees and vegetation characteristic of hill land, and that all of said lands were at the dates mentioned and at all times subsequent thereto, uplands in character and existed as such at the time of the said Warren survey and in 1812.

5. That the various tracts of land embraced in the extension survey of said Arthur D. Kidder, Supervisor of Surveys, and represented upon the plats aforesaid, including the property in controversy in these consolidated causes, were not formed by accretion, or by the recession, or reliction of the waters of Ferry Lake or James Bayou since 1812.

6. That Ferry Lake is and was in 1812 and 1839 a navigable body of water.

7. This stipulation shall not be construed as an admission upon the part of defendants that the land in controversy were not included within the survey made by A. W. Warren, as a matter of law; the defendants contending that under the Warren survey their titles extended to mean high water elevation.

8. Plaintiffs and defendants shall have the right to offer evidence in these causes, and these admissions shall not be construed as preventing them, or any of them, from introducing additional evidence."

The total area involved in these suits is 79.95 acres. The Lane case involves Lot 1 of Sec. 3, T. 20, N. R. 16 West and contains 5.67 acres. The Gulf Refining Company of La. involves 11.49 acres. The Southwestern Gas & Electric Co., involves 27.87 acres. The Walling case involves 12.72 acres. The LaRobediere case involves 22.20 acres.

It will be seen from the above stipulation that the land involved was of the same character as that in the Jeems Bayou Hunting & Fishing Club, i. e.,
49 high land with high land timber growth, never at any time a part of the bed of the lake, but really the same quality and character of land as that actually within the Warren Survey.

It is also admitted that Kidder's survey in retracing Warren's work is correct; and from this follows the admission that the various areas contended for shown as a result of Kidder's reproduction of Warren's work, are correctly set forth, totalling 79.95 acres which were actually left out between the mean high water mark of the Lake and Warren's line. These admissions, which

correspond with the evidence which overwhelmingly proved the fact; put the cases in the same catigory it would seem, with the Jeems Bayou Hunting & Fishing Club wherein a finding in favor of the Government has just been made. Defendants, however, while conceding the above fact, contends these cases should be differentiated from the Jeems Bayou Hunting & Fishing Club case because the areas involved in each of these cases are comparatively very small and that the maxim de minimis lex non curat should apply.

They contend that in these particular cases the lines run by Warren are substantially meander lines, admitting that, as contended for by plaintiff, at some points in skirting the shore of Ferry Lake Warren did abruptly (and technically speaking wrongfully) quit the shore line almost at right angles and deliberately left out, between his courses and the real senuosity of the lake shore, high timbered lands in place, but that he also embraced within his meander as land, bits of water almost equalling the land left out, which resulted in the Government losing nothing, because in patenting the particular areas the Government got paid for as many acres as if Warren had carefully followed the contour and sinuosities of the Lake—therefore, if Warren did wrongfully leave out between his meander and the actual shore, the high timber lands, it is a case damnum obsque injuria so far as the government is concerned. On page 4 of their brief defendants say with respect to the Lane case, "With respect to the Warren survey Kidder admits taking the meander line as the boundary, there were included 10.9 acres of
50 lake which never belonged to the United States, and there was omitted 8.38 acres of land which should have been included." Again on page 5, "Kidder testifies that taking the whole of the northern shore of Ferry Lake involved sections 3, 10, 11, 12, 13 and 24

surveyed by Warren, the area of land lying between the Warren meander line and Kidder's establishment of the 173.09 contour line, was 69.56 acres, while the same meander line of Warren's included within his survey and shown as land, an area actually lying in the lake and never belonging to the United States Government, of approximately 44 acres." Thus reducing the actual acreage of land owned by the government by the difference between 69.56 and 44 acres, or 25.56 acres of land." Also on page 5 the defendants say on this point, "With respect to land contested for in suit 1164 as being in sections 25 and 36, the area, 22.20 acres, is trivial when compared with the quantity of land surveyed." Warren's map of section 25 shows 29.25 acres; he left out 8.90 acres or nearly one-third of the land. The land contended for in Sec. 24 is 11.49 acres. Warren's survey shows 114.80 acres not counting this, 11.49 acres, or a shortage of about 10% of the actual high land. In section 13 the amount of land claimed as left out by Warren's survey is 27.87 acres; Warren's map shows 115 acres, nearly 16% of the actual area omitted. In Sec. 10 the amount claimed herein as unsurveyed is 12.72 acres, the other land in this section left out as shown in Jeems Bayou Hunting & Fishing Club is 116.89 acres or a total of 129.61. Warren's map shows 289.88 acres, which means nearly 30% of the actual high land in the section omitted by Warren.

Kidder describes the survey made by Warren of the land in Sec. 3 as follows:

In Lot 1 of Sec. 3 (United States vs. Lane), Warren began his traverse on the southern boundary of the section at a point which was then six feet under water. This point is not covered by the water now because the lake has receded. The second course emerges from the water, crosses the boundary of the lake and begins to

ascend the upland. His angle point 2, is above the 173.09 comtour. The third course is through timber, undergrowth and over highland above the 180 foot contour, and, instead of being near the border of the lake is back in the woods and large timber. His fourth course left the highland and went back in the direction of the lake. The fifth course paralleled the border of the lake but was below the contour being 6 feet lower than the mean water elevation. The end of
51 the fifth course was exactly on the 173.09 contour. The difference in elevation between the first and second course is over 8 feet, that is, between angle points one and two.

Mr. Kidder says he sighted through the telescope along this course and found that he was actually "out from the lake to a point of lowland beyond the border of the lake. In measuring along the line we were going over the low hill which projects out into James Bayou at this place running through upland, timber and undergrowth. There is nothing on the ground to indicate that the border of the James Bayou ever occupied that position."

The line does not parallel James Bayou and, if intended as a meander, it is absolutely incorrect, the error being manifest.

Warren began his traverse here below the mean high water elevation and returned to the bayou at a point which agrees exactly with the contour. The line runs over a hill and as a result Lots 1 and 2 of Section 3 were omitted. These two lots contain an area of 8.38 acres in one compact body. Warren also omitted Lot 3 containing 9.05 acres, making a total of 17.13 acres omitted in this section." (57.64).

Plaintiff's brief contends as follows: Kidder describes Warren's survey of Sec. 10 in reference to omissions of land contended for in lot 7, as follows:

"In lots 7 of Sec. 10, (United States vs. Walling), Mr. Kidder found it necessary, in reproducing Warren's line through Sec. 10, to begin at the meander corner on the eastern boundary of Sec. 10 which was set exactly on the 173.09 contour. After paralleling the lake for two courses from this point, Warren departed from it on the third course. Following the bearings and distances given in Warren's field notes, Mr. Kidder found that when he sighted through the telescope "N. 78° W" on the third course, the line ran back into the woods on high ground 8 feet above mean water elevation. The other courses were traced out in exact accordance with the Warren field notes. The turning points on the line bore no relation to the border of the lake and were made on upland a considerable distance from the water. On the last course Warren returned to the lake at the 173.09 contour. He departed from the lake at angle point 22, shown on the Resurvey Plat."

The same comment is made as to the way in which he departed from the shore line as respects the areas omitted in the other suits. In fact, an inspection of the supplemental map filed by plaintiff marked "F" and admitted by defendants to be absolutely correct, shows the angles and methods used by Warren in his departure from the shore line in the cases complained of herein, and it cannot be questioned that at the points named Warren failed to run a correct meander line showing the sinuosities of the lake shore and at these points his line bears no true relation to the body of water, nor does it approximate a contour.

In reply to defendant's contention as to the comparatively small area involved in these consolidated suits, the Government's contention (which I find to be

a fact) is that Warren's survey of Township
52 20, N. R. 16 West, omitted 1047.67 acres of high land, 987.77 acres actually demonstrated as being omitted by subsequent corrective survey of Boyd, Bristol and Kidder; the remainder of 59.90 acres left out "is made up of strips of ground between the Traverse and the lake which were left out because the line was run at too high an elevation. In these instances, however, the traverse was run parallel with the lake and followed the contour with some degree of reason. Hence no corrections were made in the survey in this respect. The actual water surface at the time of the Warren survey which was represented as land on his plat was 65 acres." Warren described the total area of this township as 10328.09 acres, when in point of fact at the time of his survey and in 1812 when Louisiana came into the Union, the Township actually contained 11375.76 acres of high timber lands. Warren's omissions were nearly ten per cent of the whole land and this area lying unsurveyed by Warren naturally remained as the property of the United States. Defendants, however, contend that the areas included in these suits which undoubtedly lie outside of the actual so-called meander line of Warren and between it and the mean high water mark of the Lake shore, should be held to have passed to them under the patents obtained by their authors in title because the meander lines of Warren of the Ferry Lake shore are strictly meander lines defining the sinuosities of the water, altho a pronounced divigation was made by Warren from the shore line at the points complained of. The defendants do not deny that their authors in title got the acreage called for by the map of Warren and the patent; they only claim that taking the whole of the northern shore of Ferry Lake, including Sections 3, 10, 11, 12, 13, and 24 surveyed by Warren, the area of land lying

between the Warren meander line and Kidder's establishment of the 173.09 contour line was 69.56 acres and that Warren's survey included within it about 44 acres as land which in fact was water; so the Government as respects this part of the Township would only lose the difference, or 25.56 acres, which defendants virtually admit still technically remain in the Government as left out of the Warren survey. As above stated, there is no complaint by the original patentees of any of this land that they paid the government
53 for water instead of land and that they are entitled to relief from the government; on the contrary, as far as area is concerned in the original patenting of these lands, the area marked on the map and actually surveyed by Warren was accepted as land and must be presumed as closed, and defendants cannot now eke out any title to land, admittedly not within the boundaries of the property patented, on the ground that their ancestor in title did not get quite the acreage and therefore the present defendants are entitled to hold entirely new areas belonging to the Government as an offset. Title to new and separate areas of land cannot be acquired in this way. Legal title to land from the sovereign government can be acquired in only one way,—by written transfer commonly called a patent. Boldly stated the proposition of defendants is in effect that if the government has made a gain by selling water for land (the real fact as to this contention as respects this township is as follows:

As stated above Warren left out as is now conceded 1047.67 acres of high land from his survey. In this township, defendants contend that it would be equitable to permit the occupant of a piece of unsurveyed land in this township which land is about equal to the water area previously sold, in various parts of the township to compensate, and defeat the government's claim for

said unsurveyed land by replying to the suit, "you have already been paid for all the land actually in this Township and I should keep this piece and you will really suffer no loss." As stated above defendants can only keep the areas in question by showing title. They contend the area is so little and when it was left out by Warren, so utterly worthless, that the government's claims should be dismissed on the ground of de minimis lex non curat. It is true that most of the cases dealing with the discussion of the difference between a meander line and a boundary line (the question herein involved) deal with larger areas than in these present consolidated cases, and in these areas the Courts have not hesitated to apply the principles contended for by the Government in these cases. For instance, in the case of the Jeems Bayou Hunting & Fishing Club the area actually involved was 85.22 acres. In the survey of Warren, his intention to leave out of his survey lands which
54 he should have included, according to law and his duty, was manifested just as plainly in his omission of 10 acres as in the case of a hundred acres and if in the case of the omission of a hundred acres the claimants contention is rejected and the 100 acres held to be public land belonging to the United States, why should the sale be different as respects the claimant of 10 acres? It is true that ordinarily litigations do not arise unless the fight is worth while as to values and it may be that the government, but for the discovery of oil or gas in this region would not have elected to bring suit when only 10 or 25 acres were involved, but its right to do so would have been in existence even tho it elected not to enforce it. As a matter of fact these comparatively small pieces of land are now of great value, these in the above consolidated cases valued at over $100,000.00 It seems to me the rule repeatedly announced by the Supreme Court of the United States

in defining the differences between a boundary line and a true meander line must and should be applied regardless of the superficial area involved. In these 17 suits the areas in question range all the way from 5.67 to 85 acres and the proof is just as clear in the smallest as in the largest area that Warren's so called meander lines (at the points complained of) violated the rules respecting such line, to-wit: that they must in fact fairly represent the sinuosities of the body of water and practically approximate and parallel the same.

I find as a fact that at the points complained of, these lines of Warren were not run according to the above principles but that he arbitrarily in such instances left the shore at right angles thereto, blazed his way thro high lands heavily timbered, and then returning to the shore line some distance apart from his departure. The lands so left out must be held to be unsurveyed public lands and I find in favor of the Government that the areas herein involved are in that catigory and should be decreed to be the government's property.

For the reasons given in the Jeems Bayou Hunting & Fishing Club, I do not consider the defendants herein in moral bad faith, and consider that the expenses incurred by them in drilling, equipping and administering the wells on the premises should be allowed in settling with the Government. The amount of
55 oil extracted by the Producers Oil Company and taken away by the Texas Company I find as follows:

In 1153 United States vs. Lane, et al., 42,735.23 barrels and the value thereof $36,430.73. Amount for drilling well and operating same, $16,047.23. The difference between the total value of oil and counterclaim, $20,383.50.

The royalties paid were:

To C. D. Lane, $1,517.95.

To Board of Commissioners, Caddo Parish Levee Board, $4,553.84.

I find there should be judgment against:

1. The Producers Oil Co. and Texas Co., in solido in the amount of $14,311.44 being value of total production, less counterclaim and royalties.

2. The Producers Oil Co. and Texas Co. and C. W. Lane in solido in sum of $1,517.95, amount of royalties paid Lane.

3. The Producers Oil Co., Texas Co., and Board of Commissioners, Caddo Parish Levee Board, in solido, for $4,553.84, amount royalties paid Board of Commissioners, Caddo Parish Levee Board.

In suit 1158, United States vs. Gulf Refining Company, I find the total production herein to be $6,986.62, but the drilling and operating expenses were, as I find, $10,191.00 and no royalties paid. The well was not profitable and the Gulf Refining Co. actually lost money in the operation so I recommend no money judgment against the defendants in this case, only a decree in favor of the government as owners of the land and entitled to possession thereof.

In United States vs. Southwestern Gas & Electric Co., No. 1162, I find the total value of oil extracted to be $29,946.94 (32,034.87 barrels) plus the pipe line earnings $3,203.48,—total income secured by the Gulf Refining Co. from the well. The expense of drilling and operating was $12,784.68. The royalties paid to Caddo Oil Co., $933.30. The royalties paid to the Southwestern Gas & Electric Company, $747.99.

I recommend judgment against:

1. The Gulf Refining Co., of La., for $4,899.91, being difference between the royalties and counterclaims and total value of production, not including oil con-
56 tained in pipe line.

2. Against the Gulf Refining Co. and Caddo Oil and Gas Co., in solido, for $933.30, amount royalties paid to Caddo Oil & Gas Co., by Gulf Refining Co.

3. Against Gulf Refining Co. and Southwestern Gas & Electric Co., in solido, for $3,747.99, amount royalties paid the Southwestern Gas & Electric Co., as to which no expense was incurred.

In 1164, United States vs. LaRobadiere, et al.

In this case the oil produced by the Gulf Refining Company was $8,200.60 in gross value with a counterclaim for expenses actually incurred for drilling and operating of $12,771.25. There were royalties paid to Mrs. LaRobediere amounting to $3,075.21, and there should be judgment against her for that amount.

As the well was a losing venture for the Gulf Refining Co., I think no judgment in money should be given against it, but simply against it giving the land as belonging to the government.

It appeared in the course of the trial that an added royalty was paid to Blanchard, Barret & Smith of $1,205.07, and the right to litigate this matter is reserved to the Government.

No. 1163, United States vs. J. M. Walling, et al.

I find the oil produced by the Gulf Refining Company of La., of the value of $77,278.79, with a counterclaim for drilling and operating $20,643.87; difference between gross value of oil and the counterclaim, $56,634.87, for which judgment should go against the Gulf Refining Company.

It appeared in the trial that royalties had been paid

by the Gulf Refining Co., to H. L. Heilperin, Natalee Oil Co., J. A. Thigpen and S. L. Herold, and the rights of the Government should be reserved as against them.

No. 1155 United States vs. Chas. J. Green, et al;
No. 1160 United States vs. W. H. Enders, et al.; consolidated.
No. 1165 United States vs. A. C. Loucks, et al.,

Two of the above cases were consolidated, the third tried separately, but they are not distinguished however from the other cases already considered by me,
57 and the facts are practically the same and the law applicable thereto practically the same as in the cases already considered by me.

The Greene case involves lots 2 and 3, Sec. 27, containing 65.77 acres as shown by Supplemental map of plaintiff marked F. The defendants claim under a patent calling for 147.25 acres as per Warren's survey; they got all their acreage and are claiming the 65.77 acres never surveyed by Warren or more than a third of the area actually purchased by Green from the United States; if defendants' contention is upheld he would have 213.03 acres when he actually bought and paid for 147.25 acres. The methods used by Warren in leaving out of this survey high timbered lands above overflow in the cases already decided, were used in this case, it being abundantly proven in these three cases that Warren ran his so called meander line as far as 1200 feet from the true shore, working his way through high lands well timbered. This is well illustrated on the map "F" and also on the topographical map in evidence marked Plaintiff "B". The well was not profitable, the expense of drilling and operating incurred by the oil company exceeding the value of the oil and no judgment for money should be made against the Amateur Oil Company, but the Louisiana Oil Refining Co.,

bought the productions from the Amateur Oil Co., and out of the oil paid a royalty to Greene of $210.79 for which there should be judgment in solido against it and Greene. Afterwards the Louisiana Oil Ref. Company took over the well and paid a royalty to Greene of $186.78 and made a profit on its production of $557.75 net production after deducting the cost of production.

There should be judgment therefore against:

1. C. J. Greene and Louisiana Oil Refining Co., in solido, for $210.79.

2. Louisiana Refining Corporation, $557.78.

3. Louisiana Refining Corporation and C. J. Greene, in solido, 185.65, and against all defendants recognizing the land as the property of the United States. In this case Greene virtually acknowledged that this land was United States property. He made on Jan. 22, 1913, a mineral location embracing fractional NW ¼ of section 27, between the traverse line and the lake. In this location the land is referred to as "unsurveyed." He
58 did same on June 17, 1910, "for all lands below the United States Traverse in N. W. ¼ Sec. 27." No effort to develop the land under this location was made, but this incident shows he did not consider that he was the reparian owner of the area in dispute.

No. 1160, United States vs. Enders, et al.

This property embraces 66.20 acres being lots 5 and 6 of Sec. 9, and immediately adjoining the land in controversy in Jeems Bayou Hunting & Fishing Club, lying between said Jeems Bayou Hunting & Fishing Club land and Ferry Lake. There was no serious dispute of the Government's title, defendants' pleadings asserting they

had no convictions on the subject but that during 1910 veritably believing same was government land, made a mineral location; prior to the time of the withdrawal order of the President December 15, 1908. The Standard Oil Co. entered a plea of nolle contendere, but admitted it had taken oil from the land under a division order and paid the purchase price to Heilprin and asked for judgment against him in case it was held. The defendants really make no serious claim to the property as owners, but content themselves under the mineral location. The proof of the Government's ownership is as complete as in the Jeems Bayou Hunting & Fishing Club case and for the reasons therein given, judgment recognizing the United States as owners of the area in question should be entered.

As to the claim on the mineral location, your Honor has already decided that the withdrawal order of Dec. 15, 1908, was applicable to this land. So it appears defendants are without any right or legal title to the land. The Standard Oil Co. admit running oil from the land valued at $1,577.24 and paid out in royalties to the mineral locators $197.16. Judgment should go against the Standard Oil Company for $1,380.08 (with reservation of its rights to recover this amount and the $197.16 royalties against Heilprin from whom they purchased the oil) and against the defendants Levi Cooper, W. T. Crawford, W. H. Enders and Standard Oil Co., of La., in solido, for $197.16. I recommend a judgment in favor of the United States for the land in question as prayed for by the petition, and for the above amount against the defendants.

No. 1165, United States vs. A. C. Loucks, et
59 al.

The area involved is 14.13 acres, being lot 1 of Sec. 27. The evidence in the Greene case and Jeems Bayou case was offered herein besides the testimony of

Kidder and others, who with him explored the status and character of these omitted areas, and for the same reasons heretofore given by me in the cases already decided, I find the area in question was high timbered land omitted by Warren from his survey (the defendants traced title to a patent from the United States conveying 123.49½ acres and the original patentee and the defendants got this full acreage independent of the area of 14.13 acres herein claimed) and that judgment should go in favor of the United States as being the owner of the said area as not having been entered in Warren's survey. It remains to consider what money judgment should be rendered.

For the reasons given in the early part of this report, citing Cook vs. Gulf Refining Co., 135 La., 610, and in case of Elder vs. Ellerbe, et al., 135 La., 990, before any recovery by the Government for oil extracted, I think the cost of drilling and equipping the wells and operating same, should be deducted.

Inasmuch as the well cost to drill and operate, $8,439.37 and the total oil taken out was only $494.00, no judgment should go against the Producing Co., to-wit: the Standard Oil Co., but out of the exploration and operation Loucks received 61.75 and the Gulf Refining Co. 52.42 and there should be judgment against them in favor of the United States for those amounts and I so recommend.

In the discussion of each case under the title of Quantum and Basis of Recovery, the contentions of the Government with respect to the amounts which should be allowed are set forth in detail. There should be a decree in favor of the Government in the respective sums heretofore stated. In addition to the recommendations previously mentioned, it is respectfully recommended:

1. That the lands involved in the respective suits be decreed by this Court to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the Public Land or Mineral laws of the United States.

60 2. That the muniments of title under which the defendants claim may be declared null and void and held as nought insofar as they may include, directly or indirectly, the property in controversy in these suits, and, to that extent, that the said leases and transfers be cancelled and annulled. This recommendation, of course, does not include the patents on which the claims of riparian ownership are predicted, the validity of which patents is not denied by the Government. The patents, however, do not include any property in suit. This prayer of the bill of complaint relates to the leases and other transfers by which a conveyance of the various tracts was sought to be made.

3. That the lands described in the bills of complaint be adjudged and decreed to be the property of the United States, free and clear of all claims of the defendants and that the possession of said land may be restored to plaintiff.

4. That said defendants during the progress of this cause and finally and perpetually thereafter, may be enjoined from setting up any claim to said lands or any part thereof, and from creating any cloud upon the Government's title to the same, or to any of the oil, gas or minerals on or under the same, and from going upon said lands, or in any manner using the same, or extracting oil or other minerals therefrom.

5. That a receiver be appointed by this Court to take possession of said land and of all wells, improvements and drilling paraphernalia thereon and any other property and instrumentalities thereon used for the purpose of drilling and extracting, storing and transporting oil, with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and to preserve the same.

6. That defendants be ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said lands since January, 1918, and to pay plaintiff the value thereof as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced since January 1, 1918, be reserved.

In all of the above recommendations for payment of money judgments, I recommend that interest be allowed thereon at the rate of 5% per annum until paid, from the filing of this report.

Respectfully submitted,

E. H. RANDOLPH,
Master in Chancery.

61 Indorsed:—Opinion and Recommendations E. H. Randolph of the Master in Chancery. Recorded in Chancery Order Book, Vol. 5, Folio 559-587. Filed Jan. 11, 1919, 11:25 A. M.

62 (EXCEPTION TO MASTER'S REPORT BY C. J. GREENE, JR., AND THE LOUISIANA OIL REFINING CO. AND LA. OIL REFINING CORPORATION).

Now comes C. J. Greene, Jr., the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation, defendants herein, and except to the report of E. H. Randolph, Special Master, filed in this case on the eleventh day of January, 1919, and for cause of exception show:

(1).

That the Master in his said report stated and certified that the land in controversy is the property of the United States as unsurveyed land, whereas he should have certified that the property in controversy is an integral part of

The West Half of the Southwest Quarter and Fractional Northwest Quarter of Section Twenty-seven, Township Twenty, Range Sixteen, Louisiana Meridian.

patented to Charles J. Greene, Jr., October 2nd, 1911.

(2).

That the Master states and certifies in his said report that "'Greene virtually acknowledged that this land was United States property", when in fact no such acknowledgment was at any time made, and no such effect can properly be given to the mineral locations made by Greene.

(3).

That it was error in the Master to find that a judgment should be rendered against the Louisiana Oil Refining

Company and the Louisiana Oil Refining Corporation, or either of them, by reason of their having purchased the oil produced from the well drilled on the land involved in this cause, when in truth and in fact, the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation committed no wrongful act and caused the plaintiff no injury in purchasing such oil in the due course of its conduct of its business.

63 (4).

Furthermore, defendants except to the report of the Master in recommending the payment of interest on the judgment to be rendered at five per centum per annum from date of filing of this report instead of recommending that interest should run from the date of judgment, in event that judgment should be rendered against these defendants.

N. C. BLANCHARD,
BLANCHARD, GOLDSTEIN & WALKER,
Solicitors for Charles J. Greene, Jr., Louisiana Oil Refining Company and Louisiana Oil Refining Corporation.

Indorsed:—Exceptions of C. J. Greene, Jr., The Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation. Filed Jan. 30, 1919.
B.

64 (PLAINTIFF'S EXCEPTION TO MASTER'S REPORT).

Now into this Honorable Court, comes plaintiff, the United States of America, appearing herein through undersigned counsel, and excepts to the report of Hon. E. H. Randolph, Master in Chancery herein, insofar as the said report recognizes the defendants as innocent trespassers, and allows the counterclaim filed by them, for the following reasons, to-wit:

1. The Master erred in not finding and in not giving consideration to the fact that on December 15, 1908, the President of the United States, acting through the Secretary of the Interior, withdrew the land in controversy from settlement, entry or other form of appropriation in order to conserve the public interest and in aid of such legislation as might thereafter be proposed or recommended, and that said withdrawal was ratified and continued in effect by the withdrawal order issued by the President, July 2, 1910.

The evidence showing such withdrawals consists of documentary testimony offered by plaintiff in the case of the United States v. Sam W. Mason, et al, No. 1172, on the docket of this Honorable Court, being plaintiff's exhibits "A" "B" "C" "D" "E" "F"—1, 2, 3, 4, 5" "G" "H" "I" "J" "K" "L" "M" "N" "O" "P" "Q" "R" "S" "T", which said exhibits were offered in evidence in the case of the United States vs. Jeems Bayou Fishing & Hunting Club, et al, No. 1157 (record in said cause p. 9), and all testimony in said case was offered by reference in the present cause (record in present suit p. 1). This Court held in the said Mason case that the withdrawals included Township 20 N. Range 16 West, and prohibited mineral locations on the public lands described

therein, which ruling is applicable to this suit, and was so recognized by the Master in his report.

2. The well drilled by defendants on the land in controversy was not begun until the year 1916 (testimony of James W. Neal, record 67).

While no claim was, or could be, asserted by
65 defendants under the mining laws or under mineral locations, said evidence was relevant to the issue, because the Master found that the defendants had no title to said land, and the testimony above referred to shows that defendants in taking and removing said oil violated said withdrawal orders, and prevented the disposition of said oil by Congress.

3. That no testimony was offered by defendants, nor otherwise adduced, to show that they acted in good faith in drilling and operating the wells in question. That the defense of innocent trespass is an affirmative defense, and the defendants did not prove, or attempt to prove, that they extracted and removed the oil from plaintiff's land through mistake or inadvertence, nor did they show that they acted on the advice of counsel, or in the belief that they were the owners of the property. The wrongful taking of the property of another, in the absence of all other evidence, raises a presumption that the trespasser took it intentionally, wilfully or in reckless disregard of the rights of the owner, and this presumption was not overcome, nor sought to be overcome in any manner whatever by defendants.

4. The Master, in his report, did not find the total value of the oil produced from said land, but the uncontradicted testimony in the record (testimony of James W. Neal, record 67, 68) shows that said well, drilled by

the Amateur Oil Company, produced 2071.90 barrels of the value of $3,171.53, of which amount the Amateur Oil Company produced $1,475.57, representing the value of the production from August 10, 1916, until May 15, 1917. Thereafter the well was operated by the Louisiana Oil Refining Corporation. The production of the well from August 10, 1916, until May 15, 1917, was delivered by the Amateur Oil Co. to the Louisiana Oil Refining Company. The Louisiana Oil Refining Co. paid C. J. Greene, Jr., a royalty of $210.79. The Louisiana Oil Refining
66 Corporation produced oil from said well of the value of $1299.52 and paid C. J. Greene a royalty of $185.65.

Wherefore, plaintiff prays that these exceptions be sustained, and accordingly, that the counterclaim filed by defendants be rejected and disallowed, and that there be a decree in favor of the United States and against the defendants as follows, to-wit:

Against the Amateur Oil Company and the Louisiana Oil Refining Co., in solido, in the sum of	$1475.57
Against C. J. Green, Jr., Amateur Oil Company and Louisiana Oil Refining Co., in solido, in the sum of	210.79
Against the Louisiana Oil Refining Corporation in the sum of	1299.52
Against C. J. Greene, Jr., and the Louisiana Oil Refining Corporation, in solido, in the sum of	185.65

Said sums aggregating the full value of the production of oil from said land, as shown by the undisputed testimony in said cause.

Plaintiff prays that in all other respects the said report and recommendations of the Master be confirmed and made the decree of this Honorable Court. Prays for all orders and decrees necessary, and for general relief.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Filed Jan. 30, 1919.

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67 (OPINION OF THE COURT).

In Re: Government Oil Suits. Western Dist. of Louisiana.

Beginning in July, 1917, the United States filed eighteen suits against various persons to have certain land decreed the property of the United States, withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States; to cancel certain leases of the said land to various oil companies; to enjoin any further exploitation of the land; and for an accounting from the various parties who had drilled for oil, or purchased it from the drillers, or otherwise had come into possession of the oil.

The cases were referred to the Honorable Edward H. Randolph, as Special Master, and in due course he filed his reports. The land in controversy is all located in what is known as the Caddo Lake, or Ferry Lake, Oil District, in Caddo Parish, Louisiana. In each case the Master has reported in favor of the United States and has stated an account against the defendants who claim to own the land,

against those who hold under oil leases and those who have purchased the oil extracted, either from the owners, or lessees.

Certain fundamental facts govern all the cases. It appears that in 1838 most of the land in question was surveyed for the United States by Warren. In making his survey he undoubtedly left out certain portions of land, inconsiderable as to acreage but now extremely valuable because of the underlying oil deposits. In 1916 the land was resurveyed by Kidder, and the disputed areas included in the survey. Some of the defendants claim riparian rights to the land. There is no doubt, however, that all of the land included in the resurvey was high land in place at the time the original survey of Warren was made and he simply was in error in running his lines, which is not at all surprising, considering the unsettled character of the land at that time and the difficulties surveyors must have encountered.

The land was withdrawn from entry first by a proclamation of President Roosevelt in 1908, and later by proclamation of President Taft in 1910. The land lies ad-
68 jacent to Caddo or Ferry Lake and Jeems or James Bayou. It is contended by some of the defendants that Warren intended the actual shore line to be the boundary line of his survey, and the lines he actually ran, or reported that he had run, were meander lines to determine the approximate areas of the survey. In some of the cases it is admitted that the land is public domain and the defendants claim under the mining laws. A further contention is made that that there was no ownership of the oil in the Government, that oil is different to minerals of a solid character and is not susceptible of ownership until brought to the surface and separated from the soil. The Master has found against all of these contentions, and in clear and able opinions has disposed of them. It would

be useless for me to attempt to supplement the report of the Master and in my opinion his findings should be approved. The Master allowed interest from the day of the filing of his report. It is contended if ultimate judgment is against the defendants interest should be allowed only from the day of judgment. Again I must agree with the Master. The filing of his report is tantamount to the verdict of a jury and it is usual to allow interest in Federal Courts from the date of verdict rather than from the date of Judgment. It is particularly urged that there could be no judgment against the various pipe lines who purchased the oil from the drillers on the theory above stated that the government had no ownership in the oil until reduced to possession. I cannot agree with this contention either. The ownership of the Government is somewhat different to that of a private proprietor and the integrity of the Government's title in any and all considerations demands that it should have a right of action against any one profiting by a violation of the laws of the United States intended as conservation measures.

The Government has excepted to the report of the Master in allowing the defendants to set-off as against the judgment for the value of the oil the cost of producing it, contending that the parties were not in good
69 faith. Considering the extreme uncertainty of the law and all of the facts in the case, I must decide this point against the Government. This disposes of the general contentions in all the cases.

In suit No. 1155, U. S. vs. C. J. Greene, it is contended in argument that the Master's report was erroneous in rendering judgment against the Louisiana Oil Refining Corporation and not against the Amateur Oil Company from whom it purchased. This objection is not made in the exceptions to the Master's report filed. The Master found there should be no judgment against the Amateur

Oil Company because the well was not profitable and the expense of drilling and operating exceeded the value of the oil. He recommends judgment against the other defendants, however, because they actually got the oil. I see no reason to disagree with the conclusions of the Master. The decree will not prevent an adjustment of equities between the parties.

In case No. 1160 U. S. vs. Henly, et als., it is contended in argument on behalf of the Government that no counterclaim was plead or proved. I find no special exception in the record to this effect. The judgment as recommended is supported by the answers to interrogatories in the record.

The case of the U. S. vs. Thomas J. Stockley, No. 1166, is the only case presenting any difficulty, but considering the views expressed in overruling the preliminary objection, I think on the whole the Master's report should be confirmed.

The labor of the Court in these complicated cases has been much lightened by the Master through his able report and by counsel through their fair and lucid arguments and briefs. All of them are entitled to the thanks of the Court.

All exceptions will be overruled and decrees will be entered in all these cases in accordance with the suggestions of the Master. Jurisdiction in each case will be retained for the purpose of adjusting any further equities between the parties.

RUFUS E. FOSTER, Judge.

July 15/19.

(Opinion). Filed Jul. 17, 1919, W. B. Lee, Clerk. U. S. Dist. Court. West. Dist. of Louisiana.

70 (DECREE).

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

I. That the report filed herein January 11, 1919, by E. H. Randolph, Special Master in Chancery, be and the same is hereby approved and confirmed; and, accordingly:

II. That the land described in the bill of complaint, namely, Lots Numbers Two (2) and Three (3), of Section Twenty-seven (27), in Township Twenty (20) North, Range Sixteen (16) West, Louisiana Meridian, Louisiana, situated in the Parish of Caddo, Western District of Louisiana, containing Sixty-five and seventy-seven Hundredths (65.77) acres, as shown by plat of survey approved March 28, 1917, by Clay Tallman, Commissioner of the General Land Office and ex-officio Surveyor General for the State of Louisiana, be and the same is hereby decreed to have been at all times from and after December 15, 1908, lawfully withdrawn from settlement, entry, location, sale or other form of appropriation under the public land or mineral laws of the United States.

III. That the lease made by Charles J. Greene to Lee Kinebrew and H. R. Ratcliff, recorded April 25, 1916, in Book 108, page 90, of the Conveyance records of the Parish of Caddo, State of Louisiana, be and the same is declared null and void and held for naught, and any and all other leases, transfers and conveyances made by or to defendants affecting the said land, insofar as they may include directly or indirectly the above described property, be likewise declared null and void and held for naught,

and, to that extent, all of the said leases, trans-
71 fers and conveyances are annulled and shall be cancelled.

IV. That the land above described shall be, and the same hereby is, adjudged and decreed to be the perfect property of the plaintiff, the United States of America, free and clear of all claims of the said defendants, or any of them, and that the possession of the said land shall be restored to plaintiff.

V. That the said defendants, namely, Charles J. Greene, Junior, Amateur Oil Company, Incorporated, Louisiana Oil Refining Company, and Louisiana Oil Refining Corporation, shall be and they, and each of them, are hereby finally and perpetually enjoined from setting up any claim to said land, or any part thereof, and from creating any cloud upon plaintiff's title to the same, or to any of the oil, gas or minerals, on or under the same, and from going upon said land, or in any manner using the same, or extracting oil or other minerals therefrom, and, accordingly, that a writ of injunction issue restraining, enjoining and prohibiting the said defendants, and each of them, from committing the acts aforesaid, and from in any manner trespassing upon said land.

VI. That the United States of America do have and recover of Charles J. Greene, Junior, and the Louisiana Oil Refining Company, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of Two Hundred and Ten and 79/100 ($210.79) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

VII. That the United States of America do have and recover of and from the Louisiana Oil Refining Corpor-

ation, and the said defendant is hereby condemned and ordered to pay to plaintiff, the full sum of Five Hundred and Fifty-seven and 78/100 ($557.78) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

72 VIII. That the United States of America do have and recover of and from the Louisiana Oil Refining Corporation and Charles J. Greene, Junior, in solido, and the said defendants are hereby condemned and ordered to pay to plaintiff, the full sum of One Hundred and Eighty-five and 65/100 ($185.65) Dollars, together with five per cent per annum interest thereon from January 11, 1919, until paid.

IX. That the said defendants be and they are hereby ordered, directed and required to make a full, true and accurate accounting to plaintiff of all oil extracted from said land since January 1, 1918, and to pay to plaintiff the value thereof, as ascertained by said accounting, together with all rents and royalties derived therefrom, and that all of plaintiff's rights to recover the oil produced from said land by the defendants since January 1, 1918, be reserved.

X. That the said defendants be, and they are hereby condemned and ordered to pay all the costs of this suit.

XI. That pending delivery thereof to the United States of America, John H. Eastham, a resident of Shreveport, Louisiana, be and he is hereby appointed receiver to take possession of said land and of all wells, improvements and drilling paraphernalia thereon, and any other property and instrumentalities on said land, used for the purpose of drilling and extracting, storing and transporting oil,

with full power and authority to continue operations on said land in the production and sale of oil, gas and other minerals, from existing wells, and to do and perform such acts as may be necessary to protect the property of plaintiff against injury and waste and for the preservation thereof. The defendants are hereby ordered, commanded and required to surrender and deliver to said receiver the possession of said land and the aforesaid property, wells and instrumentalities thereon, upon the approval of said receiver's bond by the Clerk of this Court. The said receiver shall, within 90 days from the date of this decree,
73 furnish bond, with good and solvent surety, to be approved by the Clerk of the United States District Court in and for the Western District of Louisiana, in the sum of Five Hundred ($500.00) Dollars, which said bond may hereafter be increased, or reduced as the Court may direct, and shall be conditioned for the faithful performance of his duties and the rendition by him of a true and correct accounting and payment of all money, oil or other property that may come into his hands as receiver. The said receiver shall surrender possession of said land and all property that may come into his custody hereunder, and shall account for and pay over to the United States of America, upon demand, or on order of the Court, all oil or money received by him in his aforesaid capacity. Jurisdiction of this cause is retained by the Court to supervise, direct and control the acts of the said receiver, to obtain such accounting from the said receiver as the Court may order, to require the delivery to the United States of such land and property, and the accounting and payment to be made by the receiver, and generally for all purposes in connection with said receivership, with full reservation of the power to discharge or remove said receiver, and to appoint another receiver, or receivers, and to do and perform such other acts, in relation to the ad-

ministration of said receiver, and the termination of said receivership, and to issue such further orders in the premises, as the Court may deem necessary.

Thus done, read and signed in open Court this 4th day of August, 1919.

RUFUS E. FOSTER,
United States Judge.

Indorsed: Decree. Filed Aug. 12, 1919.
B.

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74 (PETITION & ORDER OF APPEAL.)

To the Honorable Judge of the District Court of the United States for the Western District of Louisiana, sitting within and for the Shreveport Division.

Now come Charles J. Greene, Jr., the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation, defendants herein, and with respect show they are aggrieved by the judgment made and entered in this cause on the 12th day of August, 1919, and do hereby appeal from said decree to the Circuit Court of Appeals for the Fifth Circuit, for the reasons specified in the assignment of errors which is filed herewith.

And they pray that their appeal be allowed with supersedeas; that citation issue as provided by law; and that a transcript of the record, proceedings, documents and papers upon which said decree is based, duly authenticated, may be sent up to said United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans in the State of Louisiana.

And they further pray that proper orders touching the security to be required to perfect their appeal be made.

And desiring to supersede the execution of said decree and judgment, the said defendants do herewith tender bond in such amount as the Court may require for the purpose and pray that the allowance of their appeal of supersedeas be issued.

BLANCHARD, GOLDSTEIN & WALKER,
Solicitors for Chas. J. Greene, Jr. La. Oil Co., and La. Oil Refining Corp.

ORDER.

The petition iis granted and the appeal is allowed, and shall operate ass a supersedeas to the extent that judgment in the abowe numbered and entitled cause is rendered against the defendants, Charles J. Greene, Jr., the Louisiana Oil Refiming Company and the Louisiana Oil Refining Corporatiion, upon the said defendants filing bond in the sum of Fifteen Hundred ($1500.00) Dollars with sufficient surety, conditioned as required by law.

Granted at New York in the State of New York on this the 9th day of September, 1919.

RUFUS E. FOSTER,
Judge.

75 SUPERSEDEAS BOND ON APPEAL.

United States District Court for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1155 In Equity.
Charles J. Greene, Jr., et al.

Know all men by these presents: That we, Charles J. Greene, Jr., Louisiana Oil Refining Company and Louisiana Oil Refining Corporation, as principals, and New Amsterdam Casualty Company of Baltimore, Maryland, as surety, are held and firmly bound unto and in favor of the United States of America, appellee in the above numbered and entitled cause, in the full sum of fifteen hundred ($1500.00) dollars, for the payment of which, well and truly to be made, we hereby bind ourselves, our successors and assigns, firmly and in solido, by these presents.

Dated at Shreveport, Louisiana, on this the 9 day of September, 1919.

The condition of the above obligation is such that:

Whereas on the 12th day of August, 1919, in the District Court of the United States for the Western District of Louisiana, in a suit pending in the aforesaid Honorable Court, wherein the United States of America was plaintiff and the aforesaid Charles J. Greene Jr., Louisiana Oil Refining Company and Louisiana Oil Refining Corporation were among the defendants, the aforesaid suit being numbered on the Equity Docket of the aforesaid Court as No. 1155, a decree was entered and signed against

the aforesaid Charles J. Greene, Jr., Louisiana Oil Refining Company and Louisian Oil Refining Corporation; and

Whereas the aforesaid Charles J. Greene, Jr., Louisiana Oil Refining Company and Louisiana Oil Refining Corporation have obtained an order of appeal with supersedeas to the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, States of Louisiana;

Now, therefore, if the said Charles J. Greene, Jr., Louisiana Oil Refining Company and Louisiana Oil Refining Corporation shall well and faithfully prosecute
76 such appeal and shall answer all damages and costs if they fail to make their plea good, then the above obligation to be void, otherwise to remain in full force and effect.

CHARLES J. GREENE, JR.
LOUISIANA OIL REFINING COMPANY,
LOUISIANA OIL REFINING CORPORATION,
By BLANCHARD, GOLDSTEIN & WALKER.
Solicitors.
NEW AMSTERDAM CASUALTY COMPANY,
By JUSTIN R. QUERBES.
Surety. (Agent & Atty-in-fact.

Approved this 9 day of September, 1919.
RUFUS E. FOSTER,
Judge.

77 (DEFENDANTS' ASSIGNMENT OF ERRORS)

United States District Court for the Western District of Louisiana, Shreveport Division.

United States of America,
vs. No. 1155 In Equity.
Charles J. Greene, Jr., et al.

Now comes Charles J. Greene, Jr., the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation, by their solicitors, Blanchard, Goldstein & Walker, and say that the decree entered in the above numbered and entitled suit on the 12th day of August, 1919, is erroneous, unjust and prejudicial to them as defendants; and defendants in connection with their petition for an appeal and as a specification and assignment of errors respectfully show:

(1).

That the Court erred in holding that the property in controversy in the above numbered and entitled suit is public land or property of the United States.

(2).

That it was error in the Court to hold that the property in controversy and other lands lying between the meander line of the survey of A. W. Warren, United States deputy surveyor, and Ferry Lake is not a part of the fractional northwest Quarter (Fr. NW¼) of Section Twenty-seven (27), Township Twenty (20) North, Range Sixteen (16) West, of the Louisiana Meridian, situated in the Parish of Caddo, Western District of Louisiana,

patented by the United States to Charles J. Greene, Jr., under and pursuant to act of Congress approved May 20th, 1862, being an act to secure a homestead to actual settlers of the public domain and other acts supplemental thereto.

(3).

That the Court erred in holding that the meander line run by A. W. Warren, United States deputy surveyor, and not Ferry Lake, is the line of boundary to said fractional Northwest Quarter (Fr. NW¼) of Section Twenty-seven (27), Township Twenty (20) North, Range Sixteen (16) West, of the Louisiana Meridian, situated in the Parish of Caddo, Western District of Louisiana.

78 (4).

That the Court erred in receiving in evidence the evidence of A. D. Kidder, Lester L. Clements, L. Z. Crawford, Henry C. Cowles, Frank Leverett and other witnesses to impeach the correctness of and verity of the A. W. Warren survey of 1839 on the ground of fraud, mistake and gross error, because plaintiff did not allege and did not plead such fraud, mistake or gross error, and defendants objected to the introduction and reception of the aforesaid evidence upon the trial of this case.

(5).

That the Court erred in holding that there were any facts or circumstances shown in the evidence of any notes made by the aforesaid A. W. Warren of his survey, or in the report of the aforesaid survey made by the said A. W. Warren, or in any document filed in evidence upon the trial of this case that disclosed or tended to disclose any

intention at the time of making such survey or at any time prior to 1913 on the part of the said A. W. Warren, or any other officer of the United States, to limit the aforesaid fractional Northwest Quarter (Fr. NW¼) of Section Twenty-seven (27), Township Twenty (20) North, Range Sixteen (16) West, of the Louisiana Meridian, situated in the Parish of Caddo, Western District of Louisiana, to the actual traverse lines instead of limiting same by the waters of Ferry Lake.

(6).

That the Court erred in not sustaining the plea of estoppel of the defendants against the plaintiff, arising from the letter of S. Whendall, Commissioner of the United States Land Department, to the Honorable N. C. Blanchard, written under date of February 8th, 1897, and the letter of Honorable George Otis Smith, Director, dated November 6th, 1908, to the Secretary of the Interior, in both of which it was stated that there were no public lands belonging to the United States in said Section Twenty-seven (27), Township Twenty (20) North, Range Sixteen (16) West, situated in the Parish of Caddo, Western District of Louisiana.

(7).

That the Court erred in rendering judgment against the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation, or either of them, by
79 reason of their having purchased the oil produced from the well drilled on the land claimed by plaintiff in this suit, since the Court found as a matter of fact that the cost of drilling the aforesaid well was more than the value of the oil produced therefrom, and

found that as a matter of fact all of the defendants in the above numbered and entitled suit were in good faith in drilling the aforesaid well and appropriating the aforesaid oil.

(8).

That the Court erred in rendering judgment against the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation, or either of them, for purchasing the aforesaid oil produced from the aforesaid well on the above described tract of land, while at the same time holding that no judgment should be rendered against the Amateur Oil Company, which had sold the oil to the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation, which judgment in favor of the Amateur Oil Company must have been predicated on a finding that the Amateur Oil Company was entitled to appropriate to its own use the oil produced from the aforesaid well because it had acted in good faith in drilling the well and because the value of the oil produced from it did not equal the cost of the drilling operations.

Wherefore, defendants pray that the aforesaid decree entered by the United States District Court for the Western District of Louisiana be reversed.

BLANCHARD, GOLDSTEIN & WALKER,

Solicitors for Charles J. Greene, Jr., the Louisiana Oil Refining Company and the Louisiana Oil Refining Corporation.

Indorsed: Petition for Appeal: Order: Bond: Assignment of Errors. Filed Sept. 15, 1919.

80 (PLAINTIFF'S PETITION FOR APPEAL).

To the Honorable, the Judge of the District Court of the United States, for the Western District of Louisiana:

Now into this Honorable Court comes the United States of America, plaintiff in the above numbered and entitled cause, and, with respect, represents:

That on August 4, 1919, this Court entered a final decree in said cause, from which the defendants herein have appealed, and that in said decree there was, in part, error greatly to the prejudice and injury of plaintiff as will more fully appear by the assignment of errors, filed herewith. Plaintiff desires to take a cross appeal from said decree to the United States Circuit Court of Appeals of the Fifth Circuit.

Wherefore, it is prayed that a cross appeal may be allowed to plaintiff in this cause from this Court to the United States Circuit Court of Appeals for the Fifth Circuit, and that proper orders for the allowance of such appeal may be made by this Court.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

81 ORDER.

The foregoing petition for cross appeal (with assignment of errors attached) being considered:

It is ordered that the United States of America, plaintiff in the above numbered and entitled cause, be and is hereby granted and allowed a cross appeal herein, from

this Court to the United States Circuit Court of Appeals for the Fifth Circuit, in accordance with law and with the rules of said United States Circuit Court of Appeals.

Thus done and signed this 10 day of Nov., 1919.

RUFUS E. FOSTER,
United States Judge.

ASSIGNMENT OF ERRORS ON PLAINTIFF'S CROSS APPEAL.

In the District Court of the United States for the Western District of Louisiana, Shreveport Division.

United States of America,
v. No. 1155 In Equity.
Charles J. Greene, Junior, et al.

Now comes plaintiff the United States of America, and in connection with its petition for a cross appeal herein, presents this, its assignment of errors, and says that the decree entered herein August 4, 1919, is erroneous in the following particulars, to-wit:

I.

The Court erred in allowing as an offset against the value of the oil extracted and removed from the land in controversy, the counterclaims of the Amateur
82 Oil Company, Incorporated, and the Louisiana Oil Refining Corporation, for costs and expenses incurred in producing said oil, and in not entering a decree in favor of the plaintiff for the total value of said oil.

II.

The Court erred in allowing to each of said defendants, as an offset or counterclaim, the cost of the production of said oil and in not entering a decree in favor of plaintiff for the full value of the oil extracted and removed from the land in controversy, because the said land had been withdrawn from any appropriation whatever by orders of the President of the United States, dated, respectively, December 15, 1908, and July 2, 1910, which orders were issued for the purpose of conserving the public interest and in aid of pending and proposed legislation. The said well was drilled in violation of each of said orders and in contravention of the policy of the United States to protect the public interest and to retain the oil in the ground for legislative disposition, which fact precludes the consideration of any equitable benefit to the United States from the drilling and operation of said wells.

III.

The Court further erred in applying herein the rules relating to a case of innocent trespass, for the reason that there was no evidence whatever to show that the defendants acted in good faith in extracting and removing the oil in question.

IV.

The Court further erred, in any event, in finding and holding that said defendants were entitled to deduct from the value of the oil extracted from the land in suit the costs of drilling and equipping said well, which said costs of exploration and discovery should not be allowed as an offset, credit or counterclaim.

83 Wherefore, plaintiff prays that the said decree be reversed insofar as it allows the said offset or counterclaim for the cost of drilling, equipping and operating the well in suit, and that a decree be rendered and entered, in favor of the plaintiff herein, for the full value of the oil extracted and removed from the land in controversy, as shown by the report of the Master in Chancery, or, in default of such relief, that the cause be remanded to the District Court with instructions to enter a decree in favor of the plaintiff for the full value of said oil without offset or deduction of any kind.

Plaintiff further prays that in any event, the costs of drilling and equipping said well be deducted and excluded from any allowance that may be made to defendants as an offset or counterclaim herein.

Plaintiff further prays that in all other respects the said decree be affirmed.

ROBERT A. HUNTER,
Special Assistant to the Attorney General.

Indorsed: Plaintiff's Petition for Cross Appeal, order thereon, and Assignment of Errors. Filed Nov. 12, 1919. B.

84 (NOTE OF EVIDENCE).

United States District Court In and for Western District of La. At Shreveport, Louisiana.

United States.
vs. No. 1155.
Charles J. Greene, Jr., et al.

United States District Court, in and for the Western District of Louisiana, at Shreveport, La.

United States,
vs. No. 1160.
W. H. Enders, et al.

Evidence taken before the Honorable E. H. Randolph, Special Master, in the above causes, commencing on May 3rd, 1918, in the United States Court room, at Shreveport, Louisiana.

R. B. Cook was appointed Stenographer to report the evidence and qualified by taking the proper oath.

Appearances.

Hon. R. A. Hunter, appeared on behalf of the Government;

Messrs. Blanchard & Smith, and J. Hampton Story, for defendants.

Above cases consolidated for the purpose of trial.

It is agreed in these cases, that the evidence heretofore adduced in the case No. 1157, entitled United States vs.

Jeems Bayou Fishing and Hunting Club et al, may be offered in this case and considered as if taken in these cases as far as applicable to the issues of these two consolidated cases, the Plaintiff and Defendants having the right to offer further testimony and the same is hereby offered by the plaintiff and defendants, on their respective behalfs as per the above agreement.

Counsel for Plaintiff offers in Evidence, extract copy of the Louisiana tract book, showing, as far as it does Section Twenty Seven, Township Twenty North Range sixteen West, certified by D. K. Parrot, Acting Commissioner of the General Land Office, marked Plaintiff "A".

85 Defendants interpose the following objections to the admissibility of the surveys of 1913-1914, March 28, 1917, and of its field notes and plat, made under the authority of the Department of the Interior of the United States, on the ground as follows, to-wit:

1.

Because of its incompetency, irrelevancy and immateriality.

2.

On the further ground that the said survey, so made was beyond the authority, control and jurisdiction of said Secretary of the Interior, in this, that the land described as Lots Eight, Nine and Ten of Section Ten, Township Twenty North, Range Sixteen West, were not included and embraced in the Executive Orders of withdrawal dated December 5, 1908, and July 2, 1910, respectively.

3.

On the further ground that the said survey purports to be a corrective resurvey of Section Ten, Township Twenty North, Range Sixteen West, embracing lands, as alleged and described in the bill of complaint as Lots Eight, Nine and Ten, the title to which was not in the United States at the time of said survey, but was, and is now, in private ownership having passed by patent of the United States to S. D. Pitts, according to the official survey, field notes, and plat of A. W. Warren, United States Deputy Surveyor, in 1839, and approved by the Commissioner of the General Land Office on August 31, 1839, and from Pitts passing through mesne conveyances to the Jeems Bayou Fishing and Hunting Club, one of the defendants herein.

4.

On the ground that said survey of March 28, 1917, being made subsequent to the official survey of A. W. Warren, United States Deputy Surveyor, in 1839, and of the time of the issuance thereon of patent to the Fractional Southwest Quarter of Section Ten, Township Twenty North, Range Sixteen West, that the plat of survey of Warren showing that the fractional quarter of said section borders on Ferry Lake, or Jeems Bayou
86 and for which said reasons the surveys of 1913-1914, March 28, 1917, is inadmissible to show that title to any lands lying between the fractional quarter section and the waters of Jeems Bayou, or Ferry Lake, remains or is in the United States, and further, that the said survey, if admitted, would, in effect, deprive S. D. Pitts and his assigns of the land lying between the meander of said fractional quarter section and Jeems Bayou,

or Ferry Lake, acquired and vested under said patent, bottomed on the approved official survey of A. W. Warren, United States Deputy Surveyor.

5.

On the further ground that the said surveys of 1913-1914, March 28, 1917, were made prior to such date, are incompetent to, impair, contradict, reconstruct, explain or impeach the verity of A. W. Warren's official survey, field notes and plat, or of the patent to which the same had been issued to S. D. Pitts, and to affect, abridge or deny the exercise and enjoyment of the access and approach to the waters of said Jeems Bayou, or Ferry Lake, or of any riparian rights accorded to said property bordering on said Ferry Lake under the laws of the State of Louisiana.

6.

On the further ground, that the said purported corrective survey, or resurvey, is inadmissible, for the reason, that if admitted and given effect, it would deprive, abridge and deny to said S. D. Pitts and his assigns, without due process of law, all of his rights, title and interest, right of property and privileges in said lands lying between the meander of said quarter section and Ferry Lake, acquired and vested by the patent issued by the United States, in 1860, bottomed upon the approved official survey, field notes and plat of A. W. Warren, United States Deputy Surveyor, approved by the Commissioner of the General Land Office, in contravention to and in violation of the Fifth Amendment of the Constitution of the United States, and would, further, abridge, deprive and deny to the said S. D. Pitts and his assigns, without due process of law, all of his, or their rights,

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title and interest, rights of property and privileges to the access to the waters of said Jeems Bayou, or Ferry Lake, accorded by the laws of the State of Louisiana, in violation of and in contravention to the Fourteenth Amendment of the Constitution of the United States.

7.

That the said surveys of 1913-1914, and March 28, 1917, and all such notes are incompetent to show error, omission or fraud in the survey of A. W. Warren, United States Deputy Surveyor, made in 1839, and of the Bristol Survey of 1871, if any for reason, that said errors, omissions or fraud cannot affect bona fide and innocent purchasers who have acquired the said Fractional Southwest Quarter of Section Ten, Township Twenty North, Range Sixteen West, on the faith of the correctness of said official survey of A. W. Warren, on which the patent was issued, and, further, that no proof of omission, error or fraud is admissible as such is not specifically alleged in the pleadings or in the bill of complaint.

Objection overruled, as same goes to the effect of the evidence.

To which ruling of the Court, Counsel for Defendant excepts, and asks that this note stand in lieu of formal bill of exceptions.

Filed in evidence and marked exhibit "A."

Counsel for Defendants asks that this objection, ruling and bill of exceptions be made to apply to all evidence offered on this trial and it is so ordered.

Counsel for Defendant objects to that part of the record shown in pencil, as it does not appear to be any record made by the Land Office, similar to other entries made in the Department and does not carry any explanation, as to why it appears on the tract book.

Same ruling and bill of exceptions.

88 Counsel for Plaintiff offers in evidence certified copy of Louisiana tract book, showing, as far as it shows Section Nine Township Twenty North, Range Sixteen west.

Same objection, ruling and bill of exceptions.

Filed and marked exhibit "B".

J. W. NEAL, a witness for the Plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Hunter:

Q. Mr. Neal, I show you extract from the tract book marked "A" and "B", just offered in Evidence and I will ask you to explain the pencil marks on those copies? Are you Special Agent of the Land Office?

A. Yes, sir.

Q. Are you familiar with the proceedings in the General Land Office?

A. I am.

Q. Do you know why these pencil memorandums appear on these copies?

A. Yes, sir.

Q. Please explain their meaning

A. The pencil memorandums appearing on the certified copies of the tract book, are memorandas made by the Clerks having charge of the tract books, in the Land Office, in some cases the pencil notations show the date and fractional part of section that was offered for sale by the Government. Other pencil notations refer to applications that were made by parties, giving the number, which refers to other records of the receipt of the applications.

Q. I will ask you to state whether or not, from your knowledge of the Land Office proceedings and from your knowledge of the tract books, the pencil notations appear on the original tract books and the copies you have been shown, are correct copies of the original tract book? I want to know whether or not the pencil notations are on the original tract book, and if these are copies of the originals, just as they appear?

89

A. These are exact copies of the tract book as they appear in the General Land Office at Washington, and the numbers and words written in pencil on these tract books are written in pencil on the certified copies.

Q. The certified copies are simply reproductions of the tract book?

A. The certified copy reproduces the tract book exactly.

Q. Do the pencil notations effect the land in controversy in these suits?

A. They do not.

The objection heretofore made is overruled and bill of exceptions is reserved.

Counsel for Plaintiff offered in Evidence certified copy of withdrawal dated December 15th, 1908.

Objected to by Counsel for Defendants, as the withdrawal order was not authorized by law.

Objection overruled by the Master, same going to its effect.

To which ruling, Counsel for Defendants except and ask that this note stand in lieu of formal bill of exceptions.

Filed in Evidence and marked exhibit "C."

Counsel for Plaintiff also offers in Evidence certified copy of withdrawal 'petroleum reserve No. 4', dated July 2nd, 1910.

Filed in Evidence and marked Plaintiff "D."

Counsel for Plaintiff offers in Evidence certified copy of the records of the United States Land Office at Baton Rouge, La.

Filed and marked Plaintiff "E."

Counsel for Plaintiff offers in Evidence Supplemental Plat of Township Twenty North of Range Sixteen West, approved by the Commissioner of the General Land Office March 28th, 1917, together with the memo-
90 randa and illustrative profile and legend thereon.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked exhibit "F."

Counsel for Plaintiff offered in Evidence the Supplemental Topographical Plat of Township Twenty North of Range Sixteen west, together with legend and certificate thereon.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked exhibit "G."

Counsel for Plaintiff offered in Evidence Supplemental Plat of Township Twenty North of Range Sixteen West, with the memoranda and legend thereon, approved by the Commissioner of the General Land Office, March 28th, 1917.

Same objection, ruling and bill of exceptions.

Filed in Evidence and marked exhibit "H."

Counsel for Plaintiff offered in Evidence Topographical Map of Township Twenty North of Range Sixteen west was legend and certificates thereon, approved by the Commissioner of the General Land Office March 28th, 1917.

Same objection, ruling of Court and bill of exceptions.

Filed in Evidence and marked exhibit "I."

ARTHUR D. KIDDER, a witness for the Plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Hunter:

Q. Mr. Kidder, you are the Arthur D. Kidder, Supervisor of Surveys who testified in the case No. 1157, entitled United States vs. Jeems Bayou Hunting and Fishing Club?

A. I am.

Q. You are the Mr. Kidder who executed the survey referred to throughout that testimony?

A. I am.

91 Q. I direct your attention to the land involved in these consolidated suits, in suit of United States vs. Charles J. Greene, Jr., et al, No. 1155, and I will ask you to state whether or not the land tinted on the Supplemental plat marked Plaintiff "F" is the land involved in that suit?

A. It is, and the area tinted embraces Lots Two and three of Section Twenty-Seven, Township Twenty North of Range Sixteen west.

Q. Will you give the area of those two lots?

A. The combined area of the two lots is sixty-five and 77-100 acres.

Q. What are the numbers of the lots?

A. The lots involved in this suit is lots two and three of section twenty-seven.

Q. What Township and Range?

A. Township Twenty North, of Range Sixteen West.

Q. Are those two lots included in your resurvey, and your extension survey of this Township?

A. They are included in that Extension survey executed in the winter of 1916-1917.

Q. As shown on the supplemental plat approved by the Commissioner of the General Land Office March 28th, 1917?

A. Yes, sir.

Q. I will ask you to state whether or not, in your survey of the land in dispute, in the Charles J. Greene case, was made under the instructions of the Commissioner of the General Land Office, which have been offered in evidence in the suit of the United States vs. the Jeems Bayou Hunting and Fishing Club?

A. It was.

Q. I will ask you to state whether or not the mean high water elevation of Ferry Lake, as established by your survey was at the 173.09 foot contour in 1839, according to your figures?

A. It was.

Q. You have set forth in your testimony in the case of the United States vs. The Jeems Bayou Hunting and Fishing Club, the reasons why you fixed that contour, have you not?

A. Those reasons were set forth quite exhaustively.

Q. I will ask you to say whether or not, all
92 of your testimony with respect to that contour, as given in the Jeems Bayou Hunting and Fishing Club case, applies likewise to the case of the United States vs. Charles J. Greene, et al, and the property therein involved?

A. I think that in its general relation to the subject that it is equally applicable to both cases.

Q. I will ask you to state whether or not the testimony you have given in these cases, relative to the 173.09 foot contour likewise applies to the case of the United States vs. W. H. Enders, et al?

A. It does.

Q. The Enders case involves lots five and six of section nine?

A. It does.

Q. These lots are shown on the supplemental plat approved by the Commissioner of the General Land Office March 28th, 1917?

A. On the plat approved March 28th, 1917, and marked Plaintiff "H", the same area is shown on Plaintiff's Exhibit "I."

Q. What is the area of the lots involved in the Enders case?

A. Sixty-six and 29-100 acres.

Q. I will ask you to state whether or not the property involved in these consolidated cases, was omitted from the survey of this Township, made by A. W. Warren in 1839.

Same objection, ruling and bill of exceptions as heretofore.

A. These areas were omitted from the Warren survey of 1839?

Q. Have you examined the area involved in these consolidated suits?

A. I have.

Q. Have you been over the ground frequently and carefully?

A. Yes, sir.

Q. Have a thorough examination?

A. I have.

Q. I will ask you to state what are the characteristics of the land in Section Twenty-seven, lots two and three, involved in the suit of the United States vs. C. J. Greene, Jr., et al?

A. The general characteristics of this area, included in Lots two and three of section twenty-seven, are that

it has the appearance of very high land, and it is in fact high land, with reference to the mean high water
93 elevation of Ferry Lake; the land in its original state was all heavily timbered—part of the timber has been cleared, but there remains a considerable forested area—the slopes of this land are very decided—the mean high water elevation of Ferry Lake, as determined in the resurvey was placed at 173.09 contour and the high elevation within the area of lots two and three, of section twenty-seven, runs up to a plateau thirty-seven feet above the lake level—the land in these two lots is very undulating, through both lots there are a number of draws or ravines that drain the hill lands lying to the South East of the land in Section Twenty-seven surveyed by Warren. The elevations of the land in Lots Two and Three of Section Twenty-seven, is about the same as the land in the Fractional Northwest quarter of section twenty-seven, surveyed by Warren, and in tracing out the Warren meander lien through Section Twenty-seven, especially through the North West fractional quarter, there is not the slightest difference in the general character of the land lying to the right or to the left of his traverse line—The general soil characteristics and topography, as well as the timber growth are the same on Lots Two and Three of Section Twenty-seven, as on the fractional North West quarter of Section Twenty-seven, surveyed by Warren. This land in my opinion was never a part of the bed of Ferry Lake, and no part of it has been formed by the recession of the waters of Ferry Lake, or by any process of accretion.

Q. This land in Section Twenty-seven forms a part of the fractional North West quarter of the section, as included in the Warren survey, do they not?

A. These lots are in the fractional Northwest quarter of Section Twenty-seven, but a distinction is to be drawn,

the area surveyed by Warren should properly be termed Fractional North West quarter of Section Twenty-seven, according to the plat approved August 31st, 1839, this should all be designated as lots two and three of Section Twenty-seven, which lies within the North West quarter of the Section.

Q. Was there any part of the land involved in this suit, ever in the bed of Ferry Lake, in your opinion?

A. In my opinion it was never a part of the bed of Ferry Lake.

Q. Mr. Kidder, what have you to say with regard to the Warren meander line through the fractional
94 North West quarter of Section Twenty-seven, as to whether it traverses up land throughout its entire length?

A. It does traverse up land throughout its entire length. There is no place, through the North West fractional quarter of Section Twenty-seven, where Warren's meander line approaches the border of Ferry Lake, either for elevation or for negligible distance?

Q. I will ask you to state whether or not Warren's meander line is as high as twenty-seven feet above mean high water elevation as established by you?

A. It is. That elevation will be found on Warren's traverse line between angle points Numbers seven and eight, as shown on Exhibit "G."

Q. Now how far is that from the real shore, according to your opinion, as you established it?

A. Through the high part of the Warren traverse, between Angle point Seven and Eight, the average distance is about one thousand feet to the true border of Ferry Lake.

Q. Thirty-seven feet above the altitude of the lake?

A. Yes, sir.

Q. Mr. Kidder, will you please indicate on the Supplemental Topographic Plat, offered in Evidence in this case and marked Plaintiff "G" by the letters "A" and "B" the point where Warren's meander line traverses ground thirty-seven feet above the level of the lake as established by you?

(Witness marks same on map).

Q. I understand you to say that the average distance between the letters "A" and "B", or from the letters "A" and "B" to the margin of Ferry Lake, or mean high water elevation, as you established, is One thousand feet?

A. Yes, sir.

Q. I will ask you to state whether or not, at any point, if Warren ran his meander line less than twelve feet above the mean high water elevation as you established it?

A. Broadly speaking there is no place through the fractional North West quarter of Section twenty-seven, where Warrens' meander line was twelve feet or
95 less above the mean high water elevation of Ferry Lake. There should be an exception noted to that statement, in the case of crossing two ravines. These ravines are lower than the tops of the hills, and in crossing in the ravines the meander line does get down to an elevation of about seven feet above the mean high water elevation of Ferry Lake, but the slopes along the Warren meander line in these places is very decided, that is to say that the meander line instead of following a contour was going up and down hills, going from the tops of the hills to the bottoms.

Q. Without reference to the contour?

A. Without reference to contour.

Q. I will ask you to state whether the Warren meander line represents the margin of Ferry Lake, or any other

stream or body of water, or water course, as it appears on the ground itself?

A. It does not.

Q. State whether or not the land in controversy, in the C. J. Greene suit is represented on the Warren plat as being a part of Ferry Lake?

A. It is.

Q. I show you plat of the Warren survey offered in evidence in the case of United States vs Jeems Bayou Fishing and Hunting Club, No. 1157 and I will ask you to state whether according to that plat the land involved in this suit is represented as a part of the bed of Ferry Lake?

A. It is.

Q. Mr. Kidder, is it possible to give the average elevation of Warren's meander line of Section Twenty-seven?

A. Yes, that is easily done.

Q. Will you please do that?

A. I have determined the average elevation of Warren's meander line or traverse through the fractional North West quarter of Section Twenty-seven, by this process. I have taken points along this traverse line, at intervals of two chains and fifty links, one hundred and sixty-five feet apart, at twenty-two points and taken the average elevation of the twenty-two, and the average elevation as thus determined is 198 feet above mean Gulf level or twenty-five feet above the mean high water elevation of Ferry Lake as it existed at the time of the Warren survey.

96 Q. Is there any indications whatever upon the ground or anywhere in the Township or on the lake that the mean elevation of Ferry lake was above the 173.09 foot contour in 1812 and 1839?

A. There is no indication whatever that the mean high water of Ferry Lake was above the 173.09 foot contour.

Q. I will ask you to state whether or not A. W. Warren terminated anywhere near Section Twenty-seven, in any of his section lines or ran any of his meander courses approximately on the 173.09 foot contour, as established by you?

A. He did, both to the East and West, in the same Township. In the Northeast quarter of Section Twenty-seven, Warren's meander line agrees very closely with the contour 173.09, counting from the meander corner on the eastern boundary of fractional section twenty-seven to angle point number five; again in section twenty-eight to the west of the land in suit, Warren's meander line agrees very closely with the 173.09 foot contour.

Q. In that connection, please state whether or not, if Warren had run his meander line around Section Twenty-seven, at the same elevation as the points you have mentioned, where he followed the contour approximately, would he or not have included the land in controversy in this suit?

A. He would have included every acre of the land involved in these suits.

Q. In that event the land involved in this suit would have been included in his survey?

A. It would.

Q. What have you to say with regard to the seventh courses of Warren's meander line through the central part of the northwest quarter of section twenty-seven, as surveyed by him, in regard to the elevation, above mean Gulf level?

A. Along the seventh courses of Warren's meander of section twenty-seven, the elevation is approximately twenty-seven feet above the mean level of Ferry Lake at the time of the Warren survey.

Q. What is the highest point reached on that course?

A. The highest point on the course reached at angle point seven which is on the contour of two hundred feet above mean Gulf level, or twenty-seven feet above the level of the lake at the time of the Warren survey.

Q. I will ask you to state the average distance
97 along the Warren on the Warren meander line of Ferry Lake?

A. Along Warren's seven meander course the average distance to the border of Ferry Lake is eleven hundred feet.

Q. State whether or not Warren's meander line along its entire course is a substantial distance or not from the actual mean high water elevation of Ferry Lake?

A. Through the fractional northwest quarter of section twenty-seven, it is at a point a very considerable distance from the actual border of Ferry Lake.

Q. Mr. Kidder, will you please state the average distance from the Warren meander line to the lake, approximately?

A. The nearest distance from the Warren meander line, through the fractional northwest quarter of section twenty-seven, northwest of the border of Ferry Lake, at a sharp right angle, is about nine hundred feet.

Q. Please state whether or not the land in controversy in this case, embraces a part of the large area omitted from the Warren survey?

A. It does, this land lies adjacent to similar land omitted from the Warren survey and designated in the official plat, Plaintiff Exhibit "G", as lot one of section twenty-seven, and lots one and two of section twenty-three.

Q. What is the area of the entire body of land omitted in sections twenty-seven and twenty-three?

A. The area of this whole body of land in sections twenty-three and twenty-seven, omitted in the Warren

survey and lying north of the Warren traverse line in section twenty-seven is ninety-seven and 64-100 acres.

Q. Then the area that you have mentioned lies in one compact body of land?

A. It does.

Q. What are the characteristics of the land omitted by Warren in Section twenty-three, are they similar to the land omitted in section twenty-seven?

A. The general characteristics are the same, although the extreme elevation is not as quite as high. The extreme elevation is found in the fractional north-
98 west quarter of section twenty-seven, especially along the point between the points marked "A" and "B" as shown on Exhibit "G."

Q. State whether or not the land omitted from the Warren survey in section twenty-seven, is about as high, or averages as high as the land included by him in that section?

A. I think in a general way I can state with safety that the land omitted by Warren in Section Twenty-seven, averages as high as the land included in Section Twenty-seven, as surveyed by Warren.

Q. Mr. Kidder, is the land that is involved in this suit, which was omitted by Warren, up land?

A. It is.

Q. High land?

A. It is high land, and good drainage at every point.

Q. Is the slopes sufficient so that it could be cultivated without artificial drainage?

A. Yes, in fact the slope in places are too great for normal farming methods, that is hill sides, but there is no place on either lot two or three of section twenty-seven but that the land is fit for cultivation without artificial drainage.

Q. I understood you to say, that Warren's line in section twenty-seven did not follow the contour of the lake?

A. That is true.

Q. I will ask you to say whether or not Warren's meander line along the line in controversy, is a correct meander line, if it be intended to represent the margin of Ferry Lake?

A. Warren's traverse line through the fractional north west quarter of section twenty-seven, cannot be considered a correct meander line, in the sense that it represent the border of Ferry Lake or represented the border of Ferry Lake at the time of the Warren survey, and this line as surveyed by Warren, does not conform to any of the several requirements of a meander line, as set forth in surveying rules.

Q. Mr. Kidder, as a surveyor, and from your knowledge of the line what have you to say, with reference to whether Warren erred in running his traverse line at the elevation and in the position and in the direction in which it is run?

A. Warren's survey is very much in error in
99 that respect.

Q. State whether or not, he in your opinion committed a manifest error in running the line in the position, and elevation at which he did run it, by omitting the area involved in these suits?

A. In my opinion, Warren, surveyor, is manifestly in error, as determined by every test that can be given to his so called meander line through the fractional section twenty-seven, in the northwest quarter?

Q. Is there or not, a well defined bank on the shore of Ferry Lake, along the land in controversy?

A. There is. This bank has the appearance of a bluff, that is at an elevation somewhat above the mean high water elevation of Ferry Lake. There is a definite es-

carpement agreeing with the mean high water elevation of Ferry Lake, and on the ground above the border of the lake, there is a distinct bluff, entirely through the fractional northwest quarter, with the exceptions of where the ravines or draws empty into the lake.

Q. The bluff is above the mean high water elevation as established by you, 173.09?

A. It is, but only a short distance removed in horizontal distance.

Q. Referring to the height of that bluff above the mean high water elevation 173.09, what would you say, just approximately?

A. That bluff averages from ten to fifteen feet above the border of the lake in some places, may be somewhat higher.

Q. It is a pretty high bluff?

A. So considered when compared with the general elevation around the border of Ferry Lake.

Q. I will ask you to state whether or not, Warren according to his plat of survey, surveyed any portion of section twenty-three?

A. Warren did not include any portion of section twenty-three in his survey.

Q. You have included a portion of section twenty-three, in your survey, as shown on the plat?

A. Yes, sir, that portion is seventeen and 79-100 acres, and Warren failed to establish any part of the line between sections twenty-three and twenty-seven.

100 Q. What have you to say with reference to whether or not, that land in section twenty-three, which immediately adjoins the land in section twenty-seven, omitted by Warren, was or was not a part of the bed of Ferry Lake in 1812 and 1839?

A. That land was not a part of the bed of Ferry Lake in 1812 or 1839.

Q. Was it land in place at those dates, in your opinion?

A. It was.

Q. Substantially as it exists today?

A. In practically every respect the land then was in the same condition as it is today.

Q. Referring to the land in section twenty-seven, the property involved in this suit, I will ask you to state whether or not it was land in place, substantially in the same condition as it is today, both in 1812 and 1839?

A. According to every test, we are able to give at this time, the land in lots two and three of section twenty-seven, involved in these suits, is in the same condition today as it was in 1812 and 1839, with the exception of certain clearings and improvements which have been made.

On Cross Examination he said:

By Mr. Smith:

Q. Mr. Kidder, I will show you patent of the United States to C. J. Greene, Jr., dated October 2nd, 1911, and I will ask you to examine that patent and state if the official survey referred to therein does not have reference to the A. W. Warren survey?

A. The description and area contained in the patent which you have submitted to me, have reference and refer to the official plat of Township Twenty North of Range Sixteen West, Louisiana meridian, approved August 31st, 1839, delineating the survey of A. W. Warren.

Q. That is the only survey it could have referred to, at that time?

A. At that time.

Q. I will ask you, if this patent don't read Fractional northwest quarter of section twenty-seven?

A. It does.

101 Q. I will ask you if the Warren map does not show that fractional section, as bordering Ferry Lake?

A. It does.

Q. Ferry Lake is a navigable stream?

A. It was a navigable lake, rather than a stream.

Q. Mr. Kidder, in running the meander line, the sinuosities of a stream, it is not for the purpose of boundary, but to get the acreage?

A. It is to get at the acreage contained in any fractional section and for the purpose of obtaining such data as may be necessary for the platting of the land, showing the conformation.

Q. I will ask you, if it is your understanding, relative to meander lines, in surveys of Fractional sections, it not for the purpose of defining the sinuosities of the banks of the stream, but is made to ascertain the quantity of land in the Fractional Section the sale of which is to be made and paid for by the purchaser? You notice that there is no reservation in the patent of any land in the Government?

A. No reservation whatever.

Q. No reservation on the part of the Government?

A. The only reservation of that kind, would be operative would be if this land would be covered by the withdrawal orders previously referred to by the Attorneys.

Q. The lots numbered two and three as shown on plaintiff's exhibit "F", those were added by your survey?

A. They were.

Q. They have only shown on the records of the Land Office, since your survey has been put on file?

A. They were entered on the tract book of date March 28th, 1917.

Q. You say that this land is in such shape that it could hardly be used for cultivation, the majority of the so-called omitted area?

A. A considerable part of it consists of rather steep or high slopes, although there is quite an area that is in cultivation and upon which the slopes are not too great for ordinary farming methods.

On re-direct examination he said:

By Mr. Hunter:

Q. Mr. Kidder, in that connection, I would
102 ask you whether or not Mr. Warren's meander line through the fractional northwest quarter of section twenty-seven, conforms to surveying rules?

A. It does not.

Q. Does it mark the sinuosities of Ferry Lake?

A. It does not.

Q. Mr. Kidder, I direct your attention to the other suit that we are trying, to the land involved in the other suit that we are trying, being case No. 1160, entitled, United States vs. W. H. Enders, et al. involving lots five and six of section nine, township twenty, north of range sixteen west, and I will ask you to state whether or not the land in controversy is shown in colors on the supplemental topographic plat marked Plaintiff "I?"

A. It is the area tinted blue on Plaintiff's Exhibit "I."

Q Were lots five and six of section nine omitted from the Warren survey?

A. They were.

Q. Please indicate on the plat just mentioned the position of the Warren meander line which excludes from his survey the land in controversy?

A. The position of Warrens' meander line, opposite the lots five and six of section nine, will be found to

the east, the nearest place being about a quarter of a mile distant, that part of the Warren meander line runing in and north and south direction, and bounding the fractional southwest quarter of section ten, as surveyed by Warren.

Q. Is the Warren meander line shown on the Supplemental Topographic plat, as the black line to the east of the land in controversy and separated from it by Lots eight and nine of section ten?

A. This Warren meander line at this place can be traced by following the numbers along his meander line between Angle point Ten marked "A", the "A" being at angle point No. 10, thence to angle point No. 11, then to angle points 12, 13 and 14.

Q. State whether or not the land in controversy in the Enders suit, No. 1160, consisting of lots five and six of section nine forms a part of a large area of land omitted by A. W. Warren from his survey, and if so, please state what lots were omitted by A. W. Warren and
103 what was the area omitted?

A. Lots Five and six of section nine, involved in the Enders suit is part of a larger area of land omitted from the Warren survey, which I will describe by reference to the official description contained in the General Land Office plat. This area embraced lots one and two of section ten, surveyed by Byron Bradley Bristol in 1871; it also includes the north half of the northeast quarter of section nine and lots one, two, three and four of section nine, surveyed by Bristol in 1871; it also includes lots one and two of section four surveyed by Bristol in 1871; it also includes lot three of section three; lots numbered three, four and five of section four; lots numbered five and six of section nine; lots six, eight, nine and ten of section ten; lots one and two of section fifteen; lot one of section sixteen, as shown on Supplemental plat

approved March 28th, 1917, marked Plaintiff Exhibit "H" and contains in all, five hundred and fifty-three and 26-100 acres.

Q. The area you have given of the acreage, represents the amount omitted from the Warren survey?

A. It represents the area omitted from the Warren survey in the sections and considers only the land lying in one body. It does not include and isolated parts, not a part of this large area.

Q. The lots in controversy forms a part of one large compact body of land comprising five hundred and fifty-three and 26-100 acres.

A. Yes, which was omitted by the Warren survey.

Q. Now, Mr. Kidder, you have testified in detail and at length in regard to the Warren meander line in Section ten, which excludes the land in controversy, from the land surveyed, have you not?

A. I have.

Q. Without going over the details, I will ask you to state whether or not in your opinion as a survey Warren, in running his meander line in section ten, in the position in which the line was run and at the place it was run, committed manifest error?

A. He did.

Q. Your statement is based upon the reasons given in your testimony in the case of the United States vs. Jeems Bayou Hunting and Fishing Club, No. 1157?

A. It is and on the result of the examination and retracement of the Warren meander line.

104 Q. You have also testified in the case of the United States vs. Jeems Bayou Hunting and Fishing Club, with regard to the Bristol line from the point "A" to point "C" on the resurvey plat of Township Twenty North of Range Sixteen west?

A. I have.

Q. Without going over the details of your testimony in that respect, I will ask you to state whether or not the Bristol line above referred to, if intended to represent the border of Ferry Lake or James Bayou, he committed in your opinion, manifest error in running the line in the position and in the direction he ran it?

A. I would say most certainly if Bristol intended that line to represent the true meander line of the border of Ferry Lake that it was manifest error on the part of the surveyor Bristol, and very apparent to anyone re-tracing his line, that it could not have conformed to the border of the lake.

Q. I will ask you to state whether or not the Warren and Bristol line above mentioned were run without regard to the border, shore conformation, or sinuosities of the lake, or any other body of water?

A. It was.

Q. Referring to lots five and six of section nine, the property in controversy in the Enders case, I will ask you to state whether or not those lots are up land?

A. Both of those lots are up land in character.

Q. Referring back to the Warren survey, I will ask you to state whether or not the land involved in the Enders suit, including the entire area computed by you as five hundred and fifty three and 26-100 acres, represented on the Warren plat, of his survey of 1839, as part of the lake?

A. That entire area is represented as a part of Ferry Lake.

Q. In your opinion, as a surveyor and from your knowledge of the situation, I will ask you to state whether or not the land in suit or any part of the area mentioned, was in 1812 or 1839 a part of the bed of Ferry Lake?

A. No part of the large area embracing the five hundred and fifty-three and 26-100 acres, could in any sense

of the term be considered as having been a part
105 of the bed of Ferry Lake or James Bayou at the date of the Warren survey, except a very small portion of a certain arm of James Bayou, which were included within the Bristol survey of 1871. Those arms are very limited in extent, and the eastward one, is in lot one of section ten, of the Bristol survey, and the second arm being found located in the north half of the northeast quarter of section nine in the Bristol survey. Those small areas represent merely the extreme limit of the two arms of James Bayou, and both were included within the Bristol survey.

Q. I will ask you to state whether or not, in your opinion, any of the land embraced in your extension survey, represented in the plat approved March 28th, 1917, was in 1812 or 1839, a part of the bed of Ferry Lake or James Bayou, or any other body of water?

A. No part of the area in sections three, four, nine, ten, fifteen and sixteen, the land represented on plat approved March 28th, 1917, were a part of the bed of Ferry Lake at the time of the Warren survey in 1839 or in 1812, the date of the admission of the State into the Union.

Q. Or a part of the bed of any other body of water?

A. They were not a part of the bed of any body of water.

Q. Does that same thing hold true, in regard to lots five and six of section nine, the lots in controversy?

A. It does.

Q. Mr. Kidder, have you made a careful examination and survey of the land in controversy?

A. I have.

Q. What have you to say with respect to its characteristics?

A. It is land that has a gently indulating or nearly level throughout its higher portion with gradual slopes

to the border of James Bayou to the western part of Lots five and six—the greater portion of lot six, probably a little less than ten acres is in cultivation. The balance of the two lots is in its native condition, being a mixed virgin forest with a mixed growth of hardwood species, such as are found in northwest Louisiana on similar lands. The soil is thin and poor, but it is fit for farming purposes. The drainage is good. At no point on lots five and six is there any pond, basin or marsh of any
106 description requiring artificial drainage before the land could be put in cultivation.

Q. What are the general types of trees growing on that land?

A. The general types on lots five and six, the higher portion there are to be found Post Oak, considerable black jack oak, some pine. On a portion of lot five, immediately in the vicinity of James Bayou and below the 180 foot contour, there will be found a heavy growth of overcup oak, some red gum, also be found a certain limited extent willow oak, along the border of James Bayou, but within the area of lots five and six.

Q. What are the elevations of lots five and six of section nine as shown on the Supplemental Topographic plat marked Plaintiff "I?"

A. The elevation of the higher portion of those two lots is 185 feet above mean gulf level, or twelve feet above the level of James Bayou.

Q. Right there, I will ask you to state approximately what portion of these lots lie above the 185 foot contour?

A. There is about forty per cent of the whole area above the 185 foot contour.

Q. What have you to say with reference to that portion above the 180 foot contour?

A. Approximately sixty-five per cent above the 180 foot contour.

Q. Referring to that portion above the 175 foot contour, state that proportion that is of the whole?

A. There is approximately ninety-five per cent of the whole area above the 175 foot contour.

Q. I will ask you to state whether or not the whole area of lots five and six, lie above the 173.09 foot contour?

A. It does.

Q. The 173.09 foot contour represents the mean high water elevation of Ferry Lake, as established by your survey?

A. It does and is marked on the Topographic plat marked Plaintiff "1", as the meander line of James Bayou, designated as angle points numbered 13 to thirty-two inclusive, and that line agrees with the 173.09 foot contour.

107 The taking of evidence was continued until May 6th, 1918, at ten o'clock.

May 6th, 1918, all parties being present the taking of testimony in the above numbered and entitled causes was resumed.

ARTHUR D. KIDDER, being on the stand his direct examination was resumed.

By Mr. Hunter:

Q. Mr. Kidder, is the club house of the Jeems Bayou Hunting and Fishing Club located on lot six of section nine?

A. It is located on lot six of section nine.

Q. I will ask you to state whether or not there is a decided slope of the bank at the Club house, visible to the eye?

A. There is, it is very perceptible to the eye, not exactly a bluff but the slope is sufficiently defined to be very apparent.

Q. Referring again to the land included in the suit of the United States vs. C. J. Greene, Jr., et al, I will ask you to state, whether the Warren traverse line of fractional northwest quarter of section twenty-seven, parallels Ferry Lake?

A. It does not.

Q. In which direction—you are familiar with the Warren field notes?

A. I am.

Q. In which direction was Warren running when he established that line, going towards the West or the East?

A. He was coming westward through the section, beginning the traverse line at the meander corner on the eastern boundary of section twenty-seven and terminating on the western boundary of section twenty-seven.

Q. Are there any angle points on his line, at several places?

A. There are angle points numbered one to eight inclusive, marking the turning points of his traverse line of section twenty-seven and those angle points, that is angle points seven and eight are in the fractional northwest quarter of section twenty-seven.

Q. State whether or not there is anything on the ground itself to justify the turns on that line?

A. No, nothing at all, both angle points seven
108 and eight are in the forest, at a high elevation above the lake. Both points are in the vicinity of twenty-seven feet above the lake level, and so far removed from the actual border of the lake that there is no occasion for having made an angle point at either of those places—Warren's traverse line at those two points is just

any irregular line that might be run through the woods, and does not agree with any topographic features of any kind.

Q. Does it follow the contour of the lake?

A. It does not.

Q. Does it mark the shore?

A. Not at all.

On Cross Examination he said:

By Mr. Smith:

Q. Mr. Kidder, the Warren survey don't show any section nine at all?

A. No.

Q. He neither shows any section twenty-three?

A. That is true.

Q. Those were put on the survey, after it was surveyed by you, only appear as sections according to your survey?

A. Yes. Bristol surveyed some land in Section Nine, and the survey of fractional section Nine was completed in the Extension survey represented on the plat approved March 28th, 1917.

Q. Section fifteen appears for the first time on your map?

A. It does.

Q. Also section sixteen?

A. Also section sixteen.

Q. Mr. Kidder, in the withdrawal order which reads 'Township Twenty North Range Fourteen to Sixteen, west, I will ask you, in making your survey, when you use the word 'to' a certain place, that terminates, with the termination, in this case the Range lies 16 to include 16, would you add the word 'inclusive', or what is the practice of the department?

A. The general practice of the department is to use the words or term 'inclusive' so as to be ex-
109 plicit.

On re-direct examination he said:

By Mr. Hunter:

Q. Mr. Kidder, did you have anything to do with the preparation of the withdrawal orders in these cases?

A. No, sir.

Q. Mr. Kidder, have you read the withdrawal orders involved in this suit?

A. I have.

Q. What is your interpretation of them, with respect to whether they include Township Twenty North Range Sixteen West?

A. I always interpreted the withdrawal order to include Township Twenty North, Range Sixteen West, particularly in view of the fact that the various papers in the Department, that came to me, for consideration in connection with the work to be done in Township Twenty North, Range Sixteen West, which was the only Township involving any field work, all made specific reference to the withdrawal order.

Q. Now in the withdrawal order of 1908, I will call your attention to the language used therein 'All of the Public lands in Townships 15 to 23, North Ranges 10 to 16 west' what have you to say with reference to whether or not that order includes Township Twenty North, Range sixteen west?

A. I would say that it was certainly intended to include Township Twenty North, Range Sixteen West, and would be so interpreted by the officials of the Interior Department and the General Land Office, and practically certain in view of the facts it is never the practice to

state Township or Range Numbers beyond what it is intended to include. For instance it is the general practice to use the word 'inclusive', but the mere omission of the word 'inclusive' is not a vital factor in interpreting what is meant in the description, because, if it intended to exclude Range sixteen the Range No. 16 would not have been written into the description at all. It would have read Ranges 10 to 15, and would generally have added the word 'Inclusive'.

Q. I will ask you to state whether or not there, from your investigation of this land, the principal oil development has been in Township Twenty, North, Range
110 Sixteen west, and was at the time of the withdrawal orders?

A. That was my understanding at the time I first became identified with these cases and I might add, that in numerous of the conferences in the Interior Department that I have been asked to attend, that in none of those have I ever heard any question regarding the other Townships, and the discussions in the Department have all been with reference to Township Twenty North of Range Sixteen West.

On Re-Cross Examination he said:

By Mr. Smith:

Q. Mr. Kidder, could not this withdrawal order have been expressed in two ways '14 to 15 Inclusive' or 14 to 16 and mean the same thing?

A. That would depend upon the interpretation of the description, to my mind there would be no occasion to make reference to Range 16, unless it was intended to include Range 16. You see a Range and Township involves a strip of land six miles wide, and he would scarcely say to a strip of land six miles wide, unless he intended to include that.

Q. Would be the eastern boundary?

A. That is true.

Q. Go to, that would be to the boundary?

A. You might put that interpretation upon it.

Q. Ordinarily if you said 1 to 10, would you include 10?

A. I think so.

Q. If you said 1 to 9 inclusive, would be the same as saying 1 to 10, would it not?

A. No, I think not, it doesn't seem the same to me.

Q. If the number of miles posts, the sixteen mile post, if you want to cover the distance from the starting point to the 16th mile post you have to go all the way, and you say from zero to 16, and if you say zero to 16, necessary would mean the same thing, would it not be from zero to 15, because in going from zero to 15 would not cover the 16th mile?

A. If I wanted to go to the 16th mile I would state from zero to 15, which would carry me to the 16th mile.

Q. To the beginning of the 16th mile?

111 A. Yes, sir.

Q. When you say fourteen to sixteen that carried you to the beginning of the 16th mile?

A. I would answer that question by saying the description of Ranges 14 to 16 West, is an abbreviated description stands for Ranges 14 and 16 the use of the words to acoids the use of the number 15, and in writing the description T. 20 N. R. 14 to 16 W., that is a description that calls for T. 20 N. R. 14, T. 20 N. R. 15 and T. 20 N. R. 16 W. There is no occasion to use the number 16 ordinarily in the description of the lands involved, unless it was intended to exclude that range.

Q. If I say from Smith's farm to Story's farm, would that include the Story farm?

A. Not necessarily.

Q. When you say 14 to 16, would necessarily include 16?

A. It might be interpreted perhaps when you say 14 to 16 to go only from the western boundary of Range Fourteen to the Eastern boundary of 16, in which case it would be better to say just Range 15, and not use the numbers that were not intended.

Q. To make that withdrawal order explicit to the ordinary man would have said 14 to 16 west, inclusive?

A. That would have been more correct and specific.

Q. Mr. Kidder, in your answers you have construed the correspondence along with the withdrawal order, as to your interpretation of it?

A. That is true.

Q. Standing by itself, it might be a different question?

A. Well, I would qualify my answer, by saying the interpretation of the General Land Office in interpreting descriptions there would be no doubt in my mind but what it was intended to include Range 16. That is the way that I would interpret it, but of course I note the absence of the specific term 'Inclusive' throws that doubt.

On re-direct examination he said:

By Mr. Hunter:

Q. You were asked whether or not a description reading from a certain point to another point, would include the last point mentioned, I will ask you to examine the withdrawal order of July 2nd, 1910, and state
112 whether or not it refers or uses the word 'From' in connection with the word 'to'?

A. No, sir, the term 'from' is not used.

L. L. CLEMENT, a witness for the Plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Hunter:

Q. Mr. Clement, are you the Mr. Clement who testified in the case of the United States vs. Jeems Bayou Hunting and Fishing Club?

A. Yes, sir.

Q. Please state whether or not you are familiar with the tract of land involved in these consolidated suits, United States vs. Charles J. Greene, Jr., et al., and United States vs. W. H. Enders, et al?

A. Yes sir, I am familiar with the tract of land, known as Lots Two and Three of Section Twenty seven and Lots Five and six of Section line, Township Twenty North of Range Sixteen West.

Q. Have you been over those lands and made an examination of them?

A. Yes, sir.

Q. In your capacity as United States Engineer?

A. Yes, sir.

Q. What are the general charcteristics of the land involved in the suit of the United States vs C. J. Greene, Jr., et al, in Section Twenty seven, the land involved?

A. The land involved in this suit, being lots Two and Three of Section Twenty seven, is mostly of a very high character of rolling land, cut by deep ravines. The general slope of the land being North West towards Ferry Lake; near the 173.09 foot contour there is a very decided and steep bluff, from fifteen to twenty five feet high, bordering the lake shore with a small amount of comparatively flat land lying between the base of the bluff and the 173.09 foot contour. The land is all well timbered with the overcup

and willow oak in the flat land at the base of the
113 bluff and growing up on the high land is the post oak, black oak and up land hickory and pine. Part of the land has been in cultivation a number of years, and there is an old orchard on a portion of the land to the South of the C. J. Greene house, located on the line between sections Twenty three and Twenty seven. The lake, that is Ferry lake cannot be seen from any point on the Warren meander line forming the Southern boundary of lots Two and Three of Section Twenty seven. The Warren meander line does not follow the contour, does not conform to the sinuosities of the shore line of Ferry Lake—does not follow any water course whatever. It cuts across deep ravines, as far as nearly a quarter of a mile from the lake and in no way could be construed to represent the meander line of Ferry Lake.

Q. If it was intended as the meander line of Ferry Lake, what do you say in regard to its correctness?

A. I would say that it was absolutely incorrect.

Q. Is the error manifest?

A. Yes, sir.

Q. Is there anything on the ground itself, as far as you know that would have prevented Warren from running that line along the proper contour?

A. Absolutely none, in fact would have been easier to have run his line along the proper contour than to have cut across the high land through heavy timber and undergrowth, as along the contour or border he would have had more open running and easier running.

Q. So there is no reason that you know of, why he could not have run the line along the proper contour, mean high water elevation?

A. No, sir, no reason whatever that I can see.

Q. I will ask you to state whether or not there is a high bluff along the shore of Ferry Lake in front of the land in suit?

A. There is a high bluff very close to the shore of the and in suit.

Q. Warren's traverse did not follow that bluff?

A. No, sir, cut across, the bluff, far from the lake.

Q. So that the land in suit was omitted from the War-en survey?

A. Yes, sir.

Q. From your examination of the ground, what have you say whether or not that was land in place 14 in 1812 and 1839?

A. In my opinion there could be absolutely no oubt as to the fact that the land was in place, practi-ally as it is today at the time of the A. W. Warren sur-ey in 1839, and also in the year 1812—the land is of ie same character as that lying South of the Warren averse line, has the same character of timber and appar-ntly no difference whatever.

Q. Does the Warren traverse line through the frac-onal North West quarter of section Twenty seven, mark e banks or shore of any lake or body of water or other ream?

A. No, sir, it does not.

Q. Mr. Clement, did you have some pictures taken of is tract of land?

A. Yes, sir.

Q. Will you identify the photographs taken?

A. Photographs numbered, five, six, seven and eight re taken on or near the land included in this suit and resents the typical features of the land, and timber owth on Lots Two and Three of Section Twenty seven.

Q. The photographs that you have mentioned are some the photographs offered in evidence in the case of the ited States vs Jeems Bayou Hunting and Fishing Club?

A. Yes, sir.

Q. I will ask you to examine photograph number five and state whether or not it shows any of the land involved in this suit?

A. Yes, sir, it does, reading from the photograph, shows the high bank in front of the C. J. Greene, Jr., residence, which is located on the line between Sections Twenty three and Twenty seven. The notation on the back of the photograph gives the location of the camera and the direction it was pointing and makes mentioned of the features shown in the photograph.

Q. State whether or not the photograph No. 6 is a representation of the well and the timber in the neighborhood of the well?

A. Photograph No. 6, was taken from a point on the 173.09 foot contour near angle point No. 14, facing practically towards the Greene No. 5 Oil Company well, Amateur Oil Company—view No. 6 shows the timber of the vicinity of the well and the ground in that vicinity also shows the well and pump house.

Q. What does picture No. 7 represent?

115 A. Photograph Number seven, is another view of the ground, at Well No. 5, Amateur Oil Company, taken from a point to the South East of the well, showing similar conditions as indicated by picture No. 6, the large Post Oak timber and heavy timber growth in the vicinity of the well.

Q. Is that the well involved in this Greene suit?

A. Yes, sir.

Q. What does view No. 8 show?

A. View No. 8 is likewise a picture of well number 5, Amateur Oil Company, the well involved in this suit, taken from a point Southwest of the well, showing the character of the timber on the land in the vicinity of the well, the large post oak being shown.

Q. Were those pictures taken by Mr. J. D. Amble, a local photographer under your directions?

A. Yes, sir.

Q. Are they correct representations of the views shown?

A. Yes, they are.

Q. Mr. Clement, I call your attention to the illustrative profile shown on Supplemental plat No. 20 offered in evidence in the case of United States vs. C. J. Greene, Jr, et al, marked Plaintiff "F" and I will ask you to state what the profile purports to show?

A. This profile, Plaintiff "F" shows a cross section of the ground traversed between angle point No. 7 section Twenty seven and angle point No. 1, Section Twenty-eight. The profile shows the difference in the elevation of the ground level, between the said angle points bringing out clearly the great difference in elevation traversed by that line. The lowest points indicate the ravines, that are crossed and the highest points indicate the high land —there is a difference of practically forty feet in elevation shown along this line.

Q. Mr. Clement, I will ask you to calculate the length of the Warren so called meander line in section Twenty seven, from angle point No. 5 to the meander corner between fractional sections Twenty seven and twenty eight?

A. I can give it exact by referring to the field notes (witness examines field notes). Referring to Plaintiff's exhibit No. 15, page 29 in the suit of the United
116 States vs Jeems Bayou Hunting and Fishing Club, the record of the Warren survey, shows the length of Warren's traverse from angle point No. 5 to the meander corner of fractional Sections Twenty seven and Twenty eight is 4804.8 feet.

Q. What proportion of a mile is that?

A. 12-13th of a mile approximately.

Q. And the line is run at some distance from the lake and crosses high ground?

A. Yes, sir.

Q. Can you calculate and give the distance approximately around the line established by the Kidder survey, and which represents the mean high water elevation of Ferry Lake as it existed in 1812 and 1839—I desire to know in this connection the length of the line referred to established by Mr. Kidder in front of sections Twenty three and Twenty seven.

A. Referring to Plaintiff's Exhibit No. 17, offered in evidence in the suit of the United States vs Jeems Bayou Hunting and Fishing Club, the length of the meander line of Ferry Lake in sections Twenty three and Twenty seven from angle point No. 9 in section Twenty seven, front of sections Twenty seven and Twenty three, thence through section Twenty seven to the meander corner of fractional Section Twenty seven and Twenty eight, on the 173.09 foot contour, is 6311.38 feet distance.

Q. What does that distance stand for in the terms of miles or fraction of miles?

A. Approximately 1 1-5 miles.

On Cross Examination he said:—

By Mr. Smith:—

Q. Mr. Clement, this profile map, Plaintiff "F", I will ask you if the so called omitted area of section Twenty seven, is not very broken land, with big ravines in it?

A. Yes, there are deep ravines in it.

Q. When the lake reaches 180 feet, I will ask you, if these ravines would not be filled with lake water?

A. If the lake were filled to 180 feet level, there is only two ravines in which water might possible have been

117 seen from the Warren traverse line. The intersection of the 180 foot level on the other ravine is far distant from the Warren meander line.

Q. I will ask you, if you ran the contour of these ravines, so as to tell exactly how deep they were?

A. The coutours of the land in Sections Twenty three and Twenty seven were run by Mr. Kidder.

Q. Again showing you illustrative profile, on the Exhibit referred to, I will ask you, if you have not two high peaks and two depressions?

A. Yes, sir.

Q. One below the 180 foot contour and the other at the 184 foot contour?

A. Yes, sir.

Q. I will ask you, for agricultural purposes, would not that land be practically worthless?

A. No, sir, the illustrative profile is on an exact scale, shows that it does not show the extent in the area of the high land or ravine, but there is considerable amount of high land already in cultivation, and a considerable more that is equally susceptible of cultivation. The ravines cutting through this land are quite deep, with quite precipitious banks, which drains the land, but don't cut into enough of the area to materially render the land unfit for cultivation. There are portions of the steep banks leading to Ferry Lake from the top of this plateau that is too steep for cultivation, I would think.

Q. Mr. Clement, you are familiar with the Warren survey?

A. Yes, sir.

Q. Have you examined it?

A. Yes, sir.

Q. Do you know of any reservation, or restrictions showing any of this omitted land was reserved to the Government?

A. No, sir, not any recorded in the field notes.

Q. None of Sections Twenty seven, Nine or Ten?

A. No reservation made.

Q. No restriction showing the omitted land was in the ownership of the Government?

A. He does not mention this land whatever, he mentions the traverse in front of Section Ten and
118 the traverse in front of section Twenty seven.

Q. Showing you Plaintiff's Exhibit "D" I will ask you to read from it, you notice that it says T. 17, T. Lo, all of that Township, that is a very complete description.

A. Yes, sir.

Q. Then T. 18 N, R. 14 to 14 West the words 'all of the ranges not being found there in, that is no complete description, the words 'all of Ranges' not found therein, is not that significant to your mind?

A. In what way.

Q. That the withdrawal was to go to range 16 West?

A. No, sir.

Q. But in your work when you go to a point, you want to stop, why don't you use the word 'to' if you want to go beyond you add 'inclusive'?

A. That is the general practice to make it more explicit.

Q. If you said from Smith's farm to Story's farm, you would stop when you got to Story's farm?

A. I would think so.

Q. If you wanted to include the Story farm you would use the word 'inclusive'?

A. If I had anything to do with it, I would possibly do that personally?

On Re-Direct Examination he said:—

By Mr. Hunter:—

Q. You find in the language of the withdrawal order "D" calling for all Townships, from one Township to another, is the word 'from' used?

A. No, the word 'from' is not used in the withdrawal order.

Q. There is no language in the order is there showing an intention to withdraw according to any description like Counsel suggest to you from one Township to another Township?

A. I would have to take it to include the Township 20 N. Range 16 West the way the order reads.

Q. You would read the order as a whole and construe it in reference to the whole and not construe it in reference to any particular part, but would construe it as a whole?

119

A. Yes, sir.

Q. And according to your interpretation it includes Township Twenty, North of Range Sixteen West?

A. Yes, sir.

On Cross Examination he said:—

By Mr. Smith:—

Q. When it reads Ranges 14 to 16 west, that would be a general description, would it not, would not be what you call a specific description, including 16?

A. I would think that it included R. 16. Of course it would be more specific if the word 'inclusive' was used.

Q. I will ask you to look at the second sheet of this Exhibit "D", and state if the Government does not pretend to particularly describe the withdrawals, is not the language used 'particularly described as follows to-wit—

that is the ending of the sentence begun on the first page, which sentence I will read 'all of those certain lands of the United States set forth and particularly described as follows; to-wit:—Now in view of the fact that this particular description was intended to be specific, you think that would possibly include Range Sixteen using the word 'to 16 West?

A. Yes, sir, I think if they specially meant to go only to the Eastern boundary of Range Sixteen the withdrawal order would have read Township 18, Ranges 14 & 15 west.

Q. Could it not have been arrived at by saying "14 to 15 inclusive"?

A. Yes, sir.

Q. Could not be expressed 14 to 16?

A. I would not think so. I cannot see why they would bring in Range 16, if they did not intend to include it in the withdrawal order.

Q. Don't you usually describe from the Eastern line to the Western line?

A. Yes, sir.

Q. That means that you go to the line?

A. Yes sir, all in the same range.

Q. I will ask you, if that is in your opinion
120 an indefinite and ambiguous description if it intended to include Range Sixteen West?

A. I would not call it an indefinite or ambiguous description, as I said before it could have been clearer prehaps if the word 'inclusive' had been used, but to my mind I would say that Range Sixteen was certainly included.

Q. If you were writing that order, you would have used the word 'inclusive'?

A. I undoubtedly would.

On Re-Direct Examination he said:—

Q. Mr. Clement, calling your attention to the first withdrawal order of December 15th 1908, I will ask you to look at the description, especially the word 'in' in connection with the description and state whether or not, in your opinion it includes these Townships?

A. The description reads 'the public lands in Townships 15 to 23 North and Ranges 10 to 16 West, Louisiana meridian' I would say that description included all of the lands in Townships 15, 16, 17, 18, 19, 20, 21, 22 and 23 North of Ranges 10, 11, 12, 13, 14, 15 and 16 West.

Q. Now referring Mr. Clement to the other suit that we are now trying, the suit of the United States vs W. H. Enders et al, I will ask you to state whether or not you examined the land involved in that suit, being Lots five and six of Section Nine?

A. Yes sir, very carefully.

Q. You have already testified in detail, in regard to the errors committed by A. W. Warren in the so called meander line in Section Ten, have you not?

A. Yes, sir.

Q. Is that the meander line, which excludes from his survey these lands and other lands of Section Nine, Ten, fifteen and sixteen?

A. Yes, sir. The land in sections Nine, Ten, fifteen and sixteen is one solid body of land, excluded from the Warren survey.

Q. That is shown on the Supplemental plat of Township Twenty offered in evidence in this case and
121 marked Plaintiff's exhibit "F"?

A. Yes, sir.

Q. Mr. Clement, have you been on lots five and six of Section Nine?

A. Yes, sir.

Q. And made an examination of those lots?

A. Yes, sir.

Q. What are the charcteristics of the land involved in this suit?

A. The land in lots five and six has a gentle slope, the land is high in character, mostly covered with a heavy timber growth, except in the vicinity of the Jeems Bayou Hunting and Fishing Club house, where there is a considerable area in cultivation.

Q. Is the Club house situated on one of these lots?

A. The Club house is situated on Lot Six of Section Nine. There are no decided ravines on this land. The higher portion above the 185 foot contour is practically level, all gently sloping towards the South West; below the 185 foot contour there is a more decided slope towards the South and South West to James Bayou and Ferry Lake.

Q. Referring to the Supplemental Topographic plat Plaintiff "G" offered in evidence in this case, I will ask you to state how much of the area involved in this suit lies above the 185 foot contour approximately.

A. I would estimate about one-third.

Q. How much lies above the 180 foot contour?

A. I would estimate about 9-10ths is above the 180 foot contour.

Q. State whether all of the land involved in this suit is above the 173.09 foot contour?

A. Yes, sir, it is all above the 173.09 foot contour.

Q. It is high land, up land in character?

A. Yes, sir.

Q. Referring to the Warren so called meander line in Section Ten you have already testified in the case of the United States vs. Jeems Bayou Hunting and Fishing Club, if that line was intended to represent the bank of Ferry Lake, the mean high water elevation of Ferry Lake, if he committed a manifest error?

A. I have so testified.

Q. Are you also familiar with the Bristol line
122 from the point "A" to the point "C" on the re-survey plat offered in evidence in the case of the United States vs the Jeems Bayou Hunting and Fishing Club, which is marked Plaintiff's Exhibit 8?

A. Yes, sir.

Q. You have already testified in the Jeems Bayou Hunting and Fishing Club case, in regard to that line have you not?

A. I believe that I did testify about it.

Q. Referring to the Bristol line from the point "A" to the point "C" I will ask you to state, if that was intended to represent the conformation of the shore or sinuosities of the shore, or mean high water elevation of Ferry Lake, whether it was manifest error, in your opinion as a Surveyor?

A. Yes, sir, it was manifest error, if it was intended to represent the shore of any body of water or stream.

Q. I will ask you to state whether the Warren or the Bristol line, about which I have questioned you, follows the border of Ferry Lake?

A. They do not follow the border of any body of water.

Q. Do they parallel the lake?

A. No, sir.

Q. Do they represent the sinuosities of the lake shore, or conform to the shore?

A. No, sir.

Q. Are they or not run without reference to the contour?

A. Absolutely without reference to any contour.

Q. Mr. Clement, state whether or not any photographs were taken of the land in controversy in the Enders case, under your directions?

A. Photographs numbered 21, 23, 24, 25 and 26 were taken by Mr. Dambly a local Photographer under my personal directions.

Q. I will show you photograph No. 21 and will ask you to state whether or not that represents the Club house of the Jeems Bayou Hunting and Fishing Club, situated on the land in controversy?

A. Yes, sir, Photograph No. 21 shows the Club house, the character and height of the land and the timber in the vicinity of the Club house in Lot six, Section Nine,
123 with the camera on the meander corner of fractional Sections Nine and Thirteen on the 173.09 foot contour, facing towards the Club house.

Q. Examine photograph No. 23 and state what it represents?

A. Photograph No. 23, shows the location of the oil well, Club house No. 3, Etchinson Drilling Company. The well has been abandoned and derrick destroyed. This however shows the location of the well and the large timber in the immediate vicinity.

Q. You know the location of that well?

A. Yes, sir.

Q. Do you know whether or not it is situated on the high land?

A. It is above the 185 foot contour.

Q. Pretty high land?

A. Yes sir, high land.

Q. Examine photograph No. 24 and state what it represents?

A. Photograph No. 24 was taken at angle point No. 12 on the Bristol meander line in Section Nine, facing Westerly along the Bristol meander line showing the character of the land on both sides of the so called meander line, and no evidence of any bank, and showing the same character of timber on both sides. In the picture there

are shown two men, one standing on each side of the meander line in order to more definitely locate the meander line.

Q. Who are the men shown?

A. D. R. Thompson, Mineral Inspector from the General Land Office and myself.

Q. On which side of the line are you standing?

A. I am standing on the land included in the Bristol survey and Mr. Thompson is standing on the land excluded by the Bristol survey and included by the Kidder survey.

Q. Are you the person represented in the picture with a tablet?

A. Yes, sir.

Q. That is a note book?

A. Yes sir, keeping a record of the pictures.

Q. Now examine Photograph No. 25 and state what that represents?

A. Photograph No. 25, was taken at the same locality as Photograph No. 24, at angle point No. 12 on the Bristol meander line facing North East along the Bristol meander line, showing the character of the land and the timber on the land included and excluded from the Bris-
124 tol survey. Mr. Thompson, Mineral Inspector is standing on the land excluded by Bristol and I am standing on the land included in the Bristol survey.

Q. Examine Photograph No. 26 and state what that represents?

A. Photograph No. 26, was taken at angle point No. 10 on the Bristol survey, facing Easterly along the Bristol survey, showing the character of land and timber in the vicinity and the absence of any banks along the meander line.

Q. Who are the persons represented in Photograph No. 26?

A. Mr. Thompson, United States Mineral Inspector on the left and myself on the right holding a note book in my hand. Mr. Thompson is on the land included by the Bristol survey and I am standing on the land excluded by the Bristol meander line, the meander line passing between us.

Q. Have you indicated on any plat the point from which the pictures were taken, if so on what plat?

A. On plat marked Plaintiff "I" the picture points are shown in red ink, and the location of the camera noted with a small circle with an arrow pointing in the direction at which the camera was facing.

Q. Referring again to the case of the United States vs C. J. Greene Jr, et al, I will ask you to state whether or not, well number 5 of the Amateur Oil Company, is shown on the supplemental topographical plat offered in evidence and marked exhibit "I"?

A. Yes sir, the plat mentioned shows that Greene 5, Amateur Oil Company well is located on Lot Three of Section Twenty seven, between the 185 and the 190 foot contour.

On Cross Examination he said:—

By Mr. Smith:—

Q. Mr. Clement in taking a picture showing the relative size of the trees, a good deal depends upon how far the camera is from the trees, if up close it gives a very much larger appearance?

A. Yes, sir.

Q. You have not specified the distance at which these pictures were taken?

A. The pictures were not taken at any particular distance, but in all of the pictures, you will find
125 either Mr. Thompson or myself standing along by the side of trees, so a comparison can be made in that way.

Q. But it would not be accurate measurement of the tree, because it would be at a different distance,, in other words owing to the distance the camera was from the tree, that would make a person or tree look larger or smaller owing to the distance?

A. Yes, that is true, of course it is relatively a comparison, between the different trees.

DR. HENRY C. COWLES, a witness for the plaintiff being first duly sworn, testified as follows:—

On Direct Examination he said:—

By Mr. Hunter:—

Q. Doctor, you are the Dr. Henry C. Cowles, who testified in the case of the United States vs Jeems Bayou Hunting and Fishing Club No. 1157, on the docket of this Court?

A. Yes, sir.

Q. We are now engaged in the trial of two cases, being consolidated being the case of the United States vs Charles J. Greene Jr. et al, No. 1155 and United States vs W. H. Enders No. 1160, I will ask you to state whether or not you examined the land involved in these suits?

A. Yes, sir, I did. The land involved in the C. J. Greene, Jr., suit No. 1155 was investigated carefully on December 10th, 1917, and the land involved in the W. H. Enders suit No. 1160 was visited first on December 12th and some portions on December 13th, 1917, and I also visited this for the third time on April 26th, 1918, that is the Enders property, or property involved in the Enders suit.

Q. You are an Ecologist?

A. Yes, sir.

Q. Professor of Ecology in the University of Chicago?

A. Yes, sir.

Q. State what was your purpose in making the examination of these areas?

A. To see from the character of the timber growth and general condition of the growth, what the character of the land was in 1812 and 1839.

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Q. Did you make that examination at the request of the Department of Justice?

A. Yes, sir.

Q. Please refer to the land involved in the suit of the United States vs C. J. Greene Jr, Lots Two and Three of Section Twenty seven and state the result of your examination, with particular reference to it and the count of trees that you made there, in that investigation?

A. I began my studies in this case at what I was told was the Greene cottage, that is on the line between Sections Twenty three and Twenty seven, very near the border of Ferry Lake, and from that point I walked along the 173.09 foot contour for some distance coming eventually to Green number Five well, and there I made some special studies of trees and ring counts and so on, and then after that I returned along the Warren line back to the point or near the point I started.

Q. Did you make a thorough examination of the tract?

A. Yes, sir, I went practically around the tract, also to some extent traversed it at various points.

Q. What is the character of the timber growth on the land?

A. This was extremely high land, reaching in some places twenty five, thirty five or more feet above Ferry Lake and was covered pretty generally by up land timber Post oak predominating, with pine and up land hickory. There are also some lower places, ravines in it, and on these there is overcup oak, willow oak, red gum and I find

that same timber also along the lower slopes near the lake above the 173.09, while below that line I find mostly cypress and some little birch willows.

Q. What have you to say with reference to the ages of the trees that you found, did you make any age counts?

A. Yes, sir, in the neighborhood of the well, a number of trees had been cut.

Q. Near the Green number Five?

A. Yes sir, Green No. 5 well, the well involved in this suit, a number of trees had been cut, giving me an opportunity to make ring counts. At this place a
127 post oak near the well and a little above it was found to be probably in the neighborhood of Two hundred years of age when cut. It was impossible to determine the age exactly because the heart was gone. I counted one hundred and seventy rings and estimated at least thirty more— then I found trees very close to the well standing and I estimated by comparing with other trees in the neighborhood of one hundred and one hundred and fifty years old. A small post oak below the well level eighteen inches in diameter was ninety one years, and a slightly smaller one only a foot in diameter below the well level that had been cut, and I estimated its age to be over one hundred and forty years. In this tree the heart had disappeared, and its diameter was twelve and a half inches. Near by is a standing tree thirty inches in diameter and I estimate it has an age of two hundred and fifty years or more. Another tree standing twenty six inches in diameter, I estimated its age to be one hundred and seventy five years. All of these post oak are in the neighborhood of the well, some above and some below.

Q. What have you to say with reference to the characteristics of the post oak tree, as to whether or not they will tolerate water?

A. They will not germinate in water and will not tolerate water except for a few days.

Q. The post oak is an up land tree?

A. Yes, sir, decidedly.

Q. In addition to the age count of the trees that you made, I will ask you if you examined the tree growth generally on the land?

A. Yes, sir.

Q. Of what kind of land was the tree growth typical of?

A. The tree growth is typical of land that is not subject to submergence, with the exception of the places near the lake, and up one or two ravines.

Q. You have already stated, have you not, that in the trial of the case of the United States vs Jeems Bayou Fishing and Hunting Club, that in your opinion, the mean high water elevation of Ferry Lake in 1812 and 1839 was at the 173.09 foot contour, as established by Mr. Kidder?

A. Yes, sir, I so stated.

Q. Now what have you to say, with reference
128 to the land involved in the case of the United States vs Charles J. Greene Jr. et al, whether or not it was a part of the bed of Ferry Lake in 1812 or 1839?

A. No, sir, it was not.

Q. In your opinion, as an Ecologist, did that land exist in place in 1812 and 1839, substantially the same as it exists today?

A. Yes, sir.

Q. Were you shown by any person, if so by whom, the so called Warren line through the fractional Section Twenty seven and Twenty three?

A. Yes, sir, I followed that in company with Mr. Kidder.

Q. Supervisor of Surveys?

A. Yes, sir.

Q. What have you to say in regard to the correctness or incorrectness?

A. It is manifestly incorrect, as it went off away from the bank of Ferry Lake, traveled over a very high country, some places thirty five feet above the lake, and at other places would go down across ravines and up again on the other side, and showed an absolute failure to follow any typographical contour, and the vegetation, the post oak on the high land, and the willow oaks in the ravines.

Q. Was the line run entirely without reference to the contour?

A. It was run entirely without reference to the contour.

Q. Are the any topographical conditions on the ground that in your opinion as an Ecologist, that justified the running of that line in the position and direction in which it was run?

A. None whatever.

Q. Is there anything in the timber growth to justify the running of that line?

A. No, sir.

Q. What have you to say with reference to A. W. Warren surveyor having erred in running the line in the position and at the elevation it was run?

A. He certainly erred if it was supposed to be a meander line of Ferry Lake.

Q. If he represented it as a meander line would you say that he committed a manifest error?

A. Yes, sir.

129 On Cross Examination he said:—

By Mr. Smith:—

Q. Doctor, when you were making your examination and observations in Section Nine, Ten, and Twenty seven, was it in the winter time or in the Summer time?

A. In Sections Twenty seven I made it in the Winter time, in Sections Nine and Ten, Winter and Spring.

Q. When you went there in the Winter, the trees were dead, and all trees are more difficult to interpret, the character of the trees, and didn't you have to resort to cross sections to find out what they are?

A. That is hard to answer that it is more difficult, in some respects it is but in other respects it is easier because you can see further through the forest.

Q. Is it not a fact that in your science of Ecology that you tell a tree by the foliage and the bark of the trees?

A. Usually more by the bark.

Q. Now I will ask you if the bark is not rather an uncertain way?

A. Not in most trees.

Q. But if in doubt you go into the labratory and take a cross section of the wood?

A. Yes, sir, but it is not often that that has to be done.

Q. Are you familiar with these trees here in Shreveport and in the South, as to the character of up land and low land trees?

A. Yes sir, and have been for a good many years.

Q. Without having a labratory test?

A. Yes, sir.

On Re-direct Examination he said:—

By Mr. Hunter:—

Q. Referring to the other suit which we are now trying, that is the case of the United States vs W. H. Enders et al No. 1160 I will ask you to state whether or not you examined the area involved in that suit, lots Five and six of Section Nine?

A. Yes, sir.

Q. When was that examination made?

A. That examination was made, the first examination, that is on this trip. I have often been on the area on previous trips, but not in connection with this case. I visited them the first time in December, December
130 12th, 1917, and again the following day and the third time on April 26th, 1918.

Q. Had you previously examined the land?

A. Yes, sir, in February 1914.

Q. Are you familiar with the tract in a general way?

A. Yes, sir.

Q. What are the characteristics of that tract of land, with respect to the timber growth?

A. The land very generally is high land, with up land timber, post oak, black jack oak, pine predominating.

Q. Have you visited the well site involved in this case the Club House No. 3?

A. Yes, sir, a little North East of the Club House.

Q. Are there any trees growing near that well?

A. Yes, sir, one of the characteristics of up land timber, in the very highest position of the tract, indicating black jack oak in addition to the post oak.

Q. Did you have an opportunity to make any age counts on this land?

A. No, sir, not in that vicinity, and I made in that neighborhood only a general study. I noticed a good many trees of a size indicating an age of one hundred and fifty years or more.

Q. A good deal of that land is very high?

A. Yes, sir, especially in the neighborhood of the wells.

Q. You remember the site of the club house of the Jeems Bayou Fishing and Hunting Club?

A. Yes, sir been there several times.

Q. Are there any trees on that site?

A. Most of the land there has been denuded of the trees, and is subject to cultivation. There are some trees

remaining especially West of the Club house, near the lake, but the most of the timber has been cut in proximity to the Club House.

Q. What is the timber growth on this tract of land typical of?

A. It is typical of high land, except that timber close to the lake shore, near the 173.09 contour, to the West.

Q. Taking the area as a whole involved in this suit, what do you say in regard to the timber growth?

A. The area as a whole, is of a very high land character, and is up land.

Q. Was it or not in your opinion, as an Eco-
131 logist land in place in 1812?

A. Yes, sir, it was land in place in 1812, also in 1839.

Q. Also in 1839?

A. Yes, sir.

Q. Land well drained?

A. Very well drained.

Q. Referring to resurvey plat of Township Twenty offered in evidence in the suit of the United States vs Jeems Bayou Fishing and Hunting Club, marked Plaintiff's Exhibit 8, I will ask you to state whether or not you have followed the so called Bristol meander line indicated on that plat by the letters "A" to "B" and "C"?

A. Yes, sir, I have followed that two separate times.

Q. What have you to say in regard to the timber growth along that line, on both sides of it?

A. It is the same on both sides, but between the letters "A" and "B" the timber has been cut, but very soon you come into the uncut timber and it is the same on each side of the line, the timber being post oak, black jack oak, and is the same on both sides.

Q. I will ask you to state whether or not the line marks the banks of any lake, stream or water course?

A. No, sir.

Q. Would you say that there was post oak, black jack and pine trees all along the line?

A. Yes, sir, on both sides.

Q. Are those trees characteristic of up land?

A. Yes, sir.

Q. If that line was intended to represent the border, or contour what is your opinion with reference to whether it is correct or incorrect?

A. It is incorrect.

Q. Was the error apparent?

A. Yes, sir very apparent.

Q. Now have you seen the line between Lots Five and Six of Section nine and Lots eight and nine of Section Ten?

A. Yes, sir.

Q. In a general way is there any difference between the character of the land on both sides?

A. It is quite the same on both sides, almost
132 entirely up land, with up land timber, excepting the extreme South end of the line.

Q. Lots five and six of Section Nine, forms a part of a large area of land omitted from the Warren survey, do they not?

A. Yes, sir.

Q. You are familiar with the entire area omitted?

A. Yes, sir, been over it quite a good deal.

Q. I will ask you to state, in your opinion as an Ecologist whether all of the lands embraced in Lots eight, nine and Ten of Section Ten, and the lots in sections Nine, fifteen and sixteen, and the area involved in these present suits were all land in place in 1812 and 1839?

A. Yes, sir, they were.

Q. Were they then, in your opinion as an Ecologist substantially in the same condition that they are to-day?
A. Yes, sir.

No Cross Examination.

LIONEL L. JANES, a witness for the Plaintiff, being first duly sworn, testified as follows:—

On Direct Examination he said:—

By Mr. Hunter:—
Q. Mr. Janes, are you an Ecologist?
A. Yes, sir.
Q. Are you the same Lionel L. Janes, who testified in the case of the United States vs Jeems Bayou Fishing and Hunting Club?
A. Yes, sir.
Q. We are engaged in the trial of the case of the United States vs Charles J. Greene Jr. et al, involving the land in Section Twenty seven, and the case of the United States vs W. H. Enders, involving lots five and six of section Nine. I will ask you to state whether or not you are familiar with those tracts of land?
A. Yes, sir, I am.
Q. When did you first become familiar with them?
A. Late in the year 1913 and in the early part of 1914.
Q. During the years 1913-1914, do you remember having visited these particular tracts of land?
A. Yes, sir, I visited them a number of times.

133 Q. Your purpose at that time was to ascertain whether Ferry Lake existed in 1812 and to determine the mean high water elevation?

A. Yes, sir, those two things were a part of the questions at issue and also I visited those tracts for many other purposes, which all fit into the general probe as to Ferry Lake, when it came into existence, and whether it existed in 1812 and 1839 and where the mean high water mark was at at those dates.

Q. Did you find the mean high water mark, from your investigations made in 1913-1914 to be at the position shown by Mr. Kidder's survey as 173.09?

A. Yes, sir.

Q. State whether or not subsequent to the time 1913-1914 to which you have referred if you visited these tracts for the purpose of making an Ecologic investigation?

A. Yes, sir, since then for that purpose.

Q. When did you make your subsequent visit?

A. I visited lots five and six of section Nine Township Twenty North of Range Sixteen West, December 12th 1917; I visited lots two and three of Section Twenty seven on December 14th, 1917.

Q. Please state in a general way the result of your examination with regard to the land involved in the suit of the United States vs C. J. Greene Jr. et al, in Section Twenty seven.

A. The land involved in that suit is up land in character, it is high, dry and well drained and forms a part of a peninsular projecting North from the area South on the lake side with perpendicular bluffs a short distance from the lake, and of an up land character, which is not dissimilar to up land and high land in various other parts of the Township, and a great area of other land in the vicinity that is dry and well drained up land.

Q. How does the land in suit compare in general character of timber growth, soil and other features with the land that Warren included in his survey in that section?

A. It is practically of the same character of the land which he included in his survey. A portion of this area involved has been cut over and cleared for farming purposes, notably lot two of Section Twenty seven, and from the indications lot two at one time was heavily forested with a species peculiarly up land in character,
134 being post oak, pine, black jack oak. Lot three of section Twenty seven is still forested with up land timber prevailing, consisting of post oak, black jack some up land hickory. The post oak compare favorably with the post oak on the adjacent up lands, compare favorably in size and age. The post oaks in this locality are usually comparatively old, when they reach a diameter of twenty to thirty inches. There are many such trees on this tract and the tracts adjacent to it on the South; the average rate of growth is about seven rings to the inch.

Q. Did you make any age counts on this tract?

A. Yes, sir, I did.

Q. State the result of your age counts?

A. I examined a post oak stump, which is situated South 190 feet from the Greene well No. 5, with a diameter inside of the bark of fifteen and a half inches and outside of the bark, seventeen and 7-100 inches, the stump being twenty four inches high, and the age when cut was ninety one years. The tree had been cut at least one year. The elevation of this stump was about 187 feet; Another post oak with a diameter, inside of the bark of twenty one inches, and outside of the bark twenty three inches, the stump being 28 inches in height, and it was 160 years old when cut. This tree had been cut at least one year. This tree was three hundred feet South of the Greene well number Five. I made quite a number of age counts of post oak stumps adjacent to this area on up land but I have not the data here, but the rate of growth was prac-

tically the same on lots Two and three as on the land adjacent up land to the South, and there are quite a large number of post oak in and about the location of the Greene well number Five varying in diameter from twenty to thirty inches, and are in age from one hundred and fifty to two hundred and twenty five years or more.

Q. State whether or not there are post oak and other trees growing on this land, which antedate 1812?

A. Yes, sir, there are a good many.

Q. What is your opinion with respect to whether or not this land was land in place in 1812, and 1839?

A. Yes, sir, it was land in place in 1812 and 1839 and a long time prior to that date.

Q. Is there any doubt whatever about that
135 fact?

A. No, sir.

Q. Now referring to the so called Warren meander line in section Twenty three and Section Twenty seven, I will ask you to state whether or not you were shown, or have examined that meander line?

A. Yes, sir, I traveled that line with Mr. A. D. Kidder, Supervisor of Surveys, on one, two or three occasions.

Q. What do you say in regard to its correctness or incorrectness?

A. The line is manifestly incorrect, in as much as it attempts to delineate or mark the true border of Ferry Lake.

Q. Is it run according to the contour of Ferry Lake?

A. No, sir.

Q. Does it mark the conformation or the sinuosities of a body of water?

A. It does not.

Q. Is it or not run without regard or reference to the contour?

A. It was run with reference to no contour whatever.

Q. Now referring to the area involved in the case of the United vs W. H. Enders et al, being Lots five and six of Section Nine, state whether or not you are familiar with that land?

A. Yes, sir, I am.

Q. Did you gain a familiarity with it in 1913-1914?

A. Yes, sir.

Q. And subsequent thereto, did you visit the land for the purpose of making an Ecologic investigation?

A. Yes, sir, I visited the area on December 12th, 1917, with Mr. A. D. Kidder, Supervisor of Surveys of the General Land Office.

Q. Did he point out the lines to you?

A. Yes sir, he pointed them practically all out, a large number of the meander corners on the 173.09 foot contour and a good many others.

Q. Referring again to the area involved in the suit of the United States vs C. J. Greene Jr. et al, did Mr. Kidder point out the lines to you in that case, and identify the lines for you?

A. Yes, sir.

Q. Now what are the timber characteristics and topographic features of lots Five and Six of Section
135½ nine, involved in the suit of the United States vs W. H. Enders et al?

A. The land in those two lots is up land, naturally well drained high, and a considerable part of it a sort of a plateau, comparatively level. The western portion of the tract has more or less of a slope, extending down to the shore of Ferry Lake, and between the 180 foot contour and the 173.09 foot contour there is a forest of overcup oak, willow oak, red gum trees of large size and great age. Below the 173.09 foot contour there is some cypress trees growing, in the cypress belt below the 173.09 foot contour which have germinated since Ferry Lake came

into existence; above the 180 foot contour, there is a large number of post oak trees of large size, some black jack trees, and some pine. I will say in this connection that black jack oak normally never grows large, the tree usually is small tree, scarcely ever reach a large size, and in observing a black jack forest and the amount of comparatively small size trees, you would think they were comparative young, but it is the reverse the forest is apparently old. The black jack tree is a tree that reaches maturity in less time than a post oak, and never reaches the size of the post oak. It is a tree that normally grows only on a dry site, where the land is dry for a considerable part of the year. For instance we have black jack oak on the tops of the Ozarks mountains and on the sides where the soil is thin and poor, and mostly on the West and South slopes where it is extremely hot and dry in the summer time.

Q. You say that the black jacks do not grow to great size?

A. No, sir, they do not.

Q. Do they grow to a great age?

A. They grow to a great age, but the age rings are close together.

Q. Now what does the presence of cypress trees below the 173.09 foot contour, and the presence of the willow oak, over cup oak and other trees that you have mentioned above the 173.09 foot contour prove, from the point of view of an Ecologist?

A. It proves the mean high water mark of Ferry Lake during the raft period was at the juncture of the cypress and the overcup, at the 173.09 foot contour where Mr. Kidder placed it.

Q. You believe that that contour correctly de-
136 lineates the mean high water elevation of Ferry Lake, as it existed in 1812 and 1839?

A. Yes, sir.

Q. Did you make any age counts of trees on this tract of land.

A. No, sir, I think not, though I did on the area adjacent to this on the east, I think that I give testimony relative thereto in the Jeems Bayou case.

Q. Are you familiar with the site of the Club House of the Jeems Bayou Fishing and Hunting Club?

A. Yes, sir, I have been there several times.

Q. Is there any portion of the land, in the neighborhood of the Club house in cultivation?

A. Yes, sir, there is a field close by.

Q. State whether or not any timber in that portion of the land has been cut, or most of it?

A. Yes, sir, the timber in the field has been cut down, cleared away.

Q. What have you to say regarding the age of the land involved in this suit, as to whether it existed in place in 1812 and 1839 or not?

A. Yes, sir, this land was in place in 1812 and 1839, and for many ages previous to those dates, as part of the up land, which is adjacent to it on the east, which has always been in place for a remote period of time.

Q. Is there any question whatever about that fact?

A. No, sir.

Q. Are you familiar with the Bristol meander line shown on the resurvey plat marked Plaintiff 8 offered in Evidence in the case of the United States vs. Jeems Bayou Fishing and Hunting Club which line is indicated by the letters "A" "B" and "C?"

A. Yes, sir.

Q. What do you say in regard to that line, if it was intended to represent a meander line of the lake?

A. The line referred to by Counsel, does not delineate the sinuosities of the border of any lake or stream, or

any body of water, on the other hand the line crosses up land, the land having practically the same elevation on both sides of the line.

Q. Through up land?

137 A. Through up land throughout nearly the entire extent, and being on very high land, covered with up land forest, Pine, Post oak and in most cases impossible to see Frerry Lake from any point of the line extending from near Point "A", which was practically at the lake.

Q. Does that line depart from the lake practically at right angles?

A. Yes, sir.

Q. If intended to represent the shore or conformation of the lake is it correct or incorrect?

A. Incorrect.

Q. Is it manifestly incorrect or not?

A. Yes, sir.

Q. You have already testified in the case of the United States vs. Jeems Bayou Fishing and Hunting Club relative to the Bristol meander line and Warren meander line in Section Ten, I will ask you however to state whether or not, said line follows the border of Ferry Lake and is a correct meander line of Ferry Lake?

A. No, sir, neither one follows the contour of Ferry Lake, nor either one is a correct meander line.

On Cross examination he said:

By Mr. Smith:

Q. Mr. Janes, referring to Black jack, you find that on an elevation above 185 feet?

A. It is very common at 185 feet and above and they come down to the 180 foot contour in a great many places,

but it is the high dry land where the black jacks are common.

Q. You find comparatively few between the 180 foot and the 185 foot contour?

A. In most cases, I remember there were some, through the center of that high land.

Q. I am asking you if you find them between the 180 and 185 foot contour, and if you did if they were not of comparatively recent growth?

A. Well they averaged about the same since and seemed to be the same age as those higher up.

138 Q. What would you say as to their ages?

A. From seventy-five to one hundred and fifty years old.

Q. So that from their presence you could not tell anything about what it was in 1839, when Warren was in there, as indicating the water level?

A. Yes, sir, they are proof that the water was not up about the base of those trees. They do not stand any overflow to amount to anything. Of course, if sometime during high water, it might come up and cover the ground about the base of the tree and then run away it would not hurt them?

Q. But if they were only seventy-five years of age, you could not from the evidence of those trees tell about the conditions of 1812 and 1839?

A. They are from seventy-five to one hundred and fifty years old.

Q. But I am speaking about those between the 180 and the 185 foot contour?

A. Yes, sir, I am speaking of those.

Q. Have you ever taken any accurate tests as to the amount of water they will stand? Do you know whether they will stand one week, two weeks or three weeks of overflow?

A. I never have. I studies a great many years in the Mississippi Valley, the land adjacent to the flood plains of Mississippi and I have never found any black jack oak able to stand overflow. They grow above the flood plain and overflow.

Q. But you never measured the time as to how long they would stand an overflow?

A. I have never found any that would stand any overflow to amount to anything. I have frequently searched for Black Jack oak on overflowed land, or on land that occasionally overflowed and I never could find any.

Q. How would you reconcile those conditions with the fact that these lands did go under in 1882, was overflowed?

A. Well, I think there are occasions that overflows could come up and go out immediate.

Q. Now you heard the evidence that the water gradually recedes, do would still think that you would find black jacks on the land notwithstanding the fact
139 that the overflowed covered all of this land in 1892?

A. I do not recall the evidence relating to the overflow, but I think that any overflow of any area above the 180 foot contour was very temporary, and the water would come up and immediately recede, was not on the tract for many days.

Q. But you cannot say specifically say what length of time it would stand overflow conditions, that is black jack?

A. Yes, sir, I can say that the black jack, if the overflow occurred in the growing season, they would die and would not be in there at all.

Q. If the water was there three weeks?

A. It would kill them and if the water was there for a less than that during the growing season a consider-

able number of the trees would die, of course depending upon how long the water remained on the land. If the water remained on the ground, as much as three weeks, the black jack and post oak trees would have been killed, if in the growing season.

Q. The fact that you found a fewer between the 180 foot contour and the 185 foot contour, than above, indicates that the ovreflow did kill out a good many of them, did it not?

Q. Now that was not confined to the area of 180 foot contour to the 185 foot contour?

A. Above and below there had been a good deal of timber cut and removed, and in some cases there was not any timber left, and at other places there is some timber.

Q. I will ask you—you did make the point that there and between the 180 foot contour and the 185 foot contour than above the 180 foot contour?

A. Above the 185 foot contour there is a greater area, and between the 180 foot contour and the 185 foot contour the space is very narrow, not much space there, while above the 185 foot contour, you have a large area.

Q. I will ask you if that is significant to your mind that the high water killed out a great many of these trees up to the 185 foot contour?

A. No, sir, that is not the reason, for the rea-
140 son that in that area we have Post oak that is common to high dry land.

Q. But we have shown that the Post oak does stand some overflow and eliminating the Post oak, getting back to the black jack, now I will ask you, if the fact that you found a fewer black jacks between the 180 foot contour and the 185 foot contour than you did above the 185 foot contour, show that the overflow had killed out a great many of the black jacks between the 180 foot contour and the 185 foot contour?

A. No, sir, for the reason that we have post oak flats, if there were post oaks there and the absence of black jack oak there on that particular area, it does not indicate anything in particular with reference to whether it was high dry land, but we find a great area of it, that there is no black jacks, where there are a large number of large post oak.

Q. Then, the elimination of the black jacks from the land, renders it uncertain as to what the conditions were in 1812 and 1839?

A. In the area where the black jacks grow, it practically never overflows. It is a high land tree, grows on high dry land, grows on the high ridges and derives its moisture from the rain fall.

Q. Land that is subject to periodical overflows, may have up land not of a swampy character and the presence of black jacks might be there?

A. No, sir, they will not stand overflows.

Q. Would you conclude from your experience that the black jacks could not have existed during the overflow of 1892?

A. They might stand the water for two or three days. I do not think any one overflow for any one year would kill the trees, being for a short time, but overflows several years would kill the trees. I do not think that an overflow every year for a considerable length of time, say for a week or ten days, in the course of consecutive years would absolutely destroy the black jack oak and post oak.

Q. The fact that we have very few black jacks over seventy-five or ninety years, would not show anything as to the conditions of 1812 or 1839?

A. What black jack oak are there speak for themselves and the stumps in the territory between 180 and 185 foot contour, which you understand is a very narrow strip.

Q. How wide is that area?

141 A. It is not very wide, I would say the area averages about two chains or a little less on the west side of the tract.

On re-direct examination he said:

By Mr. Hunter:

Q. Mr. Janes, in your opinion, as an Ecologist, was any of the land involved in either of these suits formed by the recession or reliction of the waters of Ferry Lake since 1812?

A. No, sir.

Q. Do you find enough evidence of old trees on the Enders tract of land to prove to you, as an Ecologist that the land was in place in 1812 and 1839?

A. Yes, sir.

PROF. FRANK C. LEVERETT, a witness for the Plaintiff being first duly sworn, testified as follows:

On Direct Examination he said:

By Mr. Hunter:

Q. You are a Geologist, are you not?

A. Yes, that is my profession.

Q. One of the Lecturers on Geology in the University?

A. I am.

Q. You testified in the trial of the case of the United States vs. Jeems Bayou Fishing and Hunting Club?

A. I did.

Q. Are you the same Prof. Leverett who testified in that case?

A. I am

Q. Professor, you as a Geologist in the employ of the Geological Survey of the United States, visited Ferry Lake in 1913 and 1914, did you not?

A. In 1914, twice in 1914, once in February and once in April.

Q. What was the purpose of your visit?

A. My purpose was to determine, the time at which the flooding of the valley in which Ferry Lake
142 lies was brought about. Whether the lake was there in 1812.

Q. You found from your investigation that it was there in 1812?

A. Yes, sir, found evidence of that fact.

Q. When you were there in 1913-1914, did you make an investigation to determine the mean high water elevation of Ferry Lake in 1812?

A. I found the topographic features that indicated mean high water from the time the lake came there until the raft was removed and that mean high water elevation Mr. Kidder found to be 173.09.

Q. Have you seen the line established by Mr. Kidder as representing the mean high water elevation?

A. Yes, sir, seen the posts along that line.

Q. Are those posts marking the mean high water elevation according to your conclusions?

A. Yes, sir, agree with my idea of where the mean high water is.

Q. What are those topographical indications of the mean high water?

A. They are the work of the waves in a succession of years, carried on for about a hundred years, constantly beating a certain level for a certain numbers of years, until they produce topographical features that can be recognized.

Q. What do you call that topographical effect?

A. The nature of the bank, a low bank.

Q. Well defined?

A. Yes, sir, sufficiently well defined to be traced practically continuous around the lake.

Q. State whether or not you can determine from geological conditions alone and without the aid of any surveyor or Ecologist or any other assistance, the mean high water elevation as it existed in 1812?

A. Yes, I can do that, if the forest were removed and there were no posts there.

Q. Did you determine the mean high water elevation, without reference to a survey?

A. Yes, sir, from topographical features.

Q. You say that that bank is well defined, practically continuous all around the lake?

A. It is.

Q. Are you familiar with the land involved in the suit of the United States vs. C. J. Greene, Jr., et al., in section twenty-seven?

143

A. Yes, sir.

Q. Have you been on that land?

A. I have been back and forth over all parts of it.

Q. When did you make an examination of it?

A. My examination began in 1914. I made another examination in 1918, January, 1918.

Q. When you made your examination in 1918, did anyone show you the lines, if so, who?

A. Mr. Clement, Surveyor, showed me the lines or angle points on the courses taken by Warren. We also followed the angle points on the 173.09 foot contour.

Q. Can you as a Geologist, determine from an examination of land whether land of that character is formed by accretion or reliction of the waters?

A. Yes.

Q. Referring to the land involved in the suit of the United States vs. C. J. Greene, Jr., et al., I will ask you to state whether or not it was land formed by accretion since 1912 or recession of the waters of Ferry Lake since that time?

A. It was not. It was land in place.

Q. Was it land in place in 1812 and 1839?

A. It was.

Q. Is there any doubt whatever about that fact?

A. No, sir.

Q. How do you determine that fact from Geology?

A. I determine it by an examination of the character of the materials, and the material there is the residuary material from the breaking down of the underlying rock formation. It is not a fresh deposit brought in by the lake and laid down, it is all old material, residual clay.

Q. If land is formed by accretion or new soil deposit, would it be loose texture?

A. Yes.

Q. What would have been the character of the soil had it been formed by recession of the waters of Ferry Lake since 1812?

A. There is no evidence of lake action, that would indicate any occupancy of the lake, above the level
144 stated.

Q. 173.09?

A. Yes, sir, since 1812.

Q. In your opinion as a Geologist, was the land in place in 1812 and 1839, substantially in the same conditions as it exists today?

A. It was.

Q. Now I will ask you to state whether or not the land in suit is all above mean high water, and was in 1812 and 1839?

A. I understand the area in suit, is all of that lying between the 173.09 foot contour and the meander line of Warren, that would be above the mean high water of Ferry Lake.

Q. What have you to say in regard to the slope of the ground, drainage conditions.

A. It has an inundulating surface, good drainage conditions.

Q. The slopes are sufficient to complete drainage?

A. Yes, sir. There are no ponds in there.

Q. Referring now to the Enders case, involving lots five and six of section nine, I will ask you to state whether you are familiar with that tract of land?

A. Yes, sir.

Q. Did you become familiar with that tract of land in 1914?

A. Yes. I visited the Club house ground and around it in February 1914 and again in 1918.

Q. Were the lines on the ground shown you and the land identified by a surveyor, at any time?

A. They were, by Mr. Clement in 1918. The line of the Bristol survey we followed that through from the point where it departs from James Bayou, east to where it intersects the Warren line of section ten, across sections nine and ten.

Q. You followed that line from point marked "A" to point "C" shown of resurvey plat offered in evidence and marked Plaintiff 9 in suit of United States vs. Jeems Bayou Fishing and Hunting Club?

A. Yes, sir, I did.

Q. You are familiar with the land involved in this suit, are you not?

A. Yes, sir.

Q. State whether or not all of the land in controversy lie above mean high water elevation of the lake?

145 A. It does lie above the 173.09 foot contour.

Q. Is the contour all around the lake marked by the banks that you have referred to?

A. Yes, sir, on the border, and on the Bayou as well as on the lake, especially well marked on James Bayou in this particular property I paid attention to that particularly the bank is well marked.

Q. That bank represents the mean high water elevation, as identified by the Kidder survey?

A. Yes, sir.

Q. You say that it is particularly well marked along James Bayou around the property involved?

A. Yes, sir, in section nine.

Q. What have you to say in regard to the drainage of the land involved in this suit?

A. It has good drainage, slopes, practically on the hill and the whole side is slope, a narrow ridge from the Club house east.

Q. The natural drainage is good?

A. Yes, sir.

Q. Is the land upland in character?

A. It is.

Q. From your examination of the area involved in this suit, state whether or not, in your opinion as a Geologist, it was land in place in 1812 and 1839?

A. It was.

Q. In your opinion, as a Geologist, was the area involved in this suit formed by accretion?

A. It was not.

Q. Or formed by the recession or reliction of the waters of Ferry lake since 1812?

A. It was not, the mean level of the lake is below the area in controversy.

Q. The area in controversy lies above the mean high water of the lake?

A. Yes, sir.

Q. What have you to say in regard to the character of the soil of the area involved in this suit, whether it shows the land was in place in 1812 and 1839?

A. It does. The soil is formed by slow pro-
146 cess, in the case just stated the residuary process of the breaking down of the formation.

Q. In the event the oil had been exposed by the recession of the water, would it be of a different character from the soil on this tract?

A. As a matter of fact if the mean high water elevation was above the 173.09 for a period of a number of years, the surface would show it, there would be wave work on it, and I failed to find any above the 173.09 foot contour.

Q. You failed to find any indications of mean high water, ever having occupied a higher elevation than the 173.09?

A. Yes, sir, I found that to be the mean high water elevation since 1812, which was 173.09, of course there may have been temporary floods, which did not produce definite banks, above the 173.09 foot contour.

On cross examination he said:

By Mr. Smith:

Q. You found there wave action, the top of the soil had been taken away up to the 180 foot contour, so that nothing but the clay was left?

A. There is no deposit and consequently a tendency to remove.

Q. Your bottom your evidence, based upon the evidence of the wave action along the shore?

A. That is the way that we determine the mean high water.

Q. Now showing you Plaintiff's exhibit No. 13 in the case of the United States vs. Jeems Bayou Fishing and Hunting Club, I will ask you, if it don't show that the current of James Bayou, in section four, set in close to the shore there?

A. Yes, sir.

Q. I will ask you, when the current, with the current of a rapid stream, if the wind is blowing, and it strikes an obstruction, if it don't make a deposit?

A. Yes, sir, a deposit on the inner side and erodes on the outside.

Q. Would not the effect be to make a promintory just below there at Wilson's point?

A. Would have made a deposit there in that
147 territory, immediately south of the lines of sections four and nine.

Q. Would have made a deposit?

A. Yes, sir.

Q. Now I will ask you if that so called current does not continue along the so called omitted area?

A. It strikes the east bluff near the center of section nine, or near the middle point of section nine, and tends there to errode.

Q. I will ask you, if hitting the promintory of Wilson's point creating an eddy, would not carry that deposit over the so called omitted area, if the water was high enough?

A. The banks there is sixteen feet, so that the water would have to be thirteen feet above the 173.09 foot contour, which would be a rare occurrence, in the pre raft stage, so that it would put very little deposit above the 173.09 foot contour.

On re-direct examination he said:

By Mr. Hunter:

Q. Referring to the plat about which you have been examined on cross examination, I will ask you to state whether or not you find any evidence, in the geological features, which you examined going to show that the omitted area, referring to the property in controversy had been formed since 1812 by the deposit of siltz or sediment from the Lake?

A. No, I found no such evidence on the area in question.

Q. In your opinion, the area in question was not formed by accretion since 1812?

A. Yes, sir, that is my opinion that it was not formed by accretion.

Q. You referred to one place on the topographic plat, about which you were question, where there probably might have been some accretion, now will you state whether or not, that was on the land in controversy, or outside of the land in controversy?

A. I said that nearly all of the floods would be below the 173.09 foot contour, be very rarely above, so that the deposit would be mostly below the 173.09 foot contour in the pre raft stage.

Q. So the deposit would be below the 173.09 foot contour in event there was any?

A. Yes.

Q. You found only slight evidence of deposit
148 above 162?

A. Yes, that is where the heavy deposit ceases, as far as I could find by sounding. I made soundings across the bed of the lake and at 162 I got out of where the deposit was that amounted to anything.

Q. 162 elevation is below the 173.09 foot contour which marks the mean elevation?

A. Yes, sir.

Q. You found no banks or evidence of deposit or sedimentation above the 173.09 foot contour, on any of the omitted area?

A. No, sir, I did not, could not find any evidence above the 173.09 foot contour, and I searched for it.

Q. You made a particular search for that?

A. Yes, sir.

Q. And failed to find any?

A. I found as I say the washed slopes with the residuary clay exposed all the way up from the 175 to 180 foot contour.

Q. Did that show a deposit of material or a sedimentation from the water, or washing away?

A. It indicated the effect of temporary flood stages, which would carry away any loose material, which was loose and ready to be carried away.

Q. It indicated a removal of material instead of a deposit of material?

A. Yes, sir, that is my judgment of the situation.

On cross examination he said:

By Mr. Smith:

Q. If this so called omitted area had been sloping towards the waters of Ferry Lake before the lake formed and deposits had been made there by the action of the currents of James Bayou at Plum Point, would not the action of the air in sixty or seventy years cause the siltz to rot and become part of the other soil?

A. No, sir, I do not think that would be sufficient time.

Q. Would not disintegrate in eighty or a hundred years?

A. No, I think the soil there is of a quality of thousands of years.

Q. If the vegetation and heavy undergrowth there, which continued for say eighty or a hundred
149 years, would it not have decayed and become a part of the original soil?

A. I do not think so.

Q. You have noticed the effect of damming the streams of water like dykes in the river?

A. Yes, sir.

Q. Now, have you not noticed that sand bars form a considerable distance around the dykes?

A. Yes, sir.

Q. That would not be dissimilar to the conditions of Plum Point

A. Be very similar.

On re-direct examination he said:

By Mr. Hunter:

Q. Is there any evidence whatever, that these lands in suit or any of the omitted land having been formed by a deposit of silts or sedimentation since 1812?

A. No, I have found no such evidence.

Q. Did you or not find this land to be of a character of up land?

A. I did, and long antedating 1812.

Q. Long antedating 1812?

A. Yes, sir, of the residuary soil formation from the underlying formation.

Counsel for Plaintiff offers in evidence in these consolidated cases, the interrogatories and answers to the interrogatories on file in the office of the Clerk of the United States District Court for the Western District of Louisiana, said interrogatories having been propounded by Plaintiff to the Defendants in said cases, in order to

ascertain the amount and value of the production of oil from the tracts in controversy.

Counsel for Defendants agree that the returns of the Standard Oil Company in the answers of the Interrogatories on facts and articles, correctly stated the amount of production.

Said statement showing the production of oil from the land in controversy in the case of the United
150 States vs. W. H. Enders, et al, No. 1160 was 2375 20-100 barrels of the value of $1577.24 and that the defendants, W. H. Enders, Levi Cooper, W. T. Crawford and W. F. Dillon received in royalties 296 91-100 barrels of the value of $197.16. This production shown by said statement, which is admitted was from the Club House well No. 3, the other well known as the Rendall No. 3 not having produced oil.

JAMES W. NEAL, a witness for the Plaintiff, being first duly sworn, testified as follows:

On direct examination he said:

By Mr. Hunter:

Q. You are Special Agent of the General Land Office?

A. I am.

Q. In these two consolidated cases, did you make an investigation at my request, to determine the amount of value of production from the tracts involved?

A. Yes, sir.

Q. From your examination of the statement attached to the answers to the Interrogatories, by the Standard Oil Company in the suit of the United States vs. W. H.

Enders, et al., and from the data you obtained, is that statement correct?

A. It is.

Q. Now, referring to the case of the United States vs. C. J. Greene, Jr., et al., have you made any investigation to determine the amount of production and the value thereof, in that case?

A. I have.

Q. What does your investigation show?

A. My investigation shows that the Greene No. 5, located on the land in question, began to produce oil August 10th, 1916, and that to and including December 31st, 1917, it had produced 2071 90-100 barrels of oil of the value of $3171.53. The Amateur Oil Company operated the well from August 10th, 1916, until May 15th, 1917, inclusive, and secured therefrom 1304- 9-100 barrels of oil of the value of $1686.36 and that they paid to C. J. Greene, Jr., royalty of 163 1-100 barrels of the value of $210.79. My investigation also shows that the Louisiana Oil Refining Company and the Louisiana Oil Re-
151 fining Corporation operated the well since May 16th and from that date to December 31st, 1917, 767 81-100 barrels of oil was extracted of the value of $1485.17 and that the royalty on this was paid to Greene of 95 97-100 barrels of the value of $185.65, making a total royalty received by Greene of 396.44 to December 31st, 1917.

The well known as Greene No. 5 was drilled by the Amateur Oil Company and their records show the cost of drilling as $6194.78 and that the cost of operating the well from August 5th, 1916, to May 15th, 1917, was $834.00 the cost of operating the well from May 16th, 1917, to December 31st, 1917, as shown by the records of the Louisiana Oil Refining Corporation, being esti-

mated at $741.74, making a total counter claim in the case to December 31st, 1917, of $7770.02.

It is agreed that James W. Neal, Special Agent from the General Land Office shall compute the total production of the Louisiana Oil Refining Company up to the time of the sale of said Company to the Louisiana Oil Refining Corporation, and shall furnish the figures showing the amount and value of said production to the stenographer herein.

It is further agreed that the said James W. Neal shall compute the amount and value of the production from the said land by the Louisiana Oil Refining Corporation and shall furnish said figures to the Stenographer to be inserted in the record.

It is further agreed that the Louisiana Oil Refining Corporation will respond to any judgment which may be rendered against it in these cases, without being made formal parties thereto said Louisiana Oil Refining Corporation reserving all of its rights in the premises but makes no objection to the fact that it has not been made party defendant herein.

Counsel for Plaintiff, with the consent of Counsel for defendants states that the introduction of testimony herein, by the Government shall not relate to any counterclaim of any kind asserted by the defendants, and shall not be considered as an admission on the part of
152 Plaintiff as to any such counterclaim or claims.

DEFENDANTS' EVIDENCE.

Counsel for Defendants offer in evidence abstract No. 5435 of the Caddo Abstract Company, pages 2 to 36, inclusive, with the right to have the abstract brought down to date.

Filed in Evidence and marked Exhibit No. 1.

Counsel for Defendants offer in Evidence the location made of the Placer mineral claim, Nos. 58,391 and 59, 391, with leave to substitute certified copies thereof.

EVIDENCE IN REBUTTAL.

Counsel for Plaintiff offers in evidence in rebuttal, for the sole purpose of showing that Charles J. Greene, Jr., recognized the title of the United States to the land in controversy, mineral locations shown in the abstract offered in Evidence by defendants being located June 10th, 1910, and June 17th, 1910, and January 22nd, 1913.

Evidence closed with the exception of the right of the defendant to put C. J. Greene, Jr., on the stand and the right of the Plaintiff to offer any evidence they see fit in rebuttal of any future testimony.

Evidence on behalf of the Standard Oil Company of La. one of the co-defendants:

J. C. PUGH, attorney, made a statement as follows:

The Standard Oil Company of Louisiana has bought from the property in dispute in this case 2,375.20 barrels of oil of the value of $1,577.24, as stated in answer to the seventeenth interrogatory propounded by the Plaintiff to this defendant.

This is all of the oil that has been bought or taken from the property in dispute in this case by the Standard Oil Company of Louisiana. The statement annexed to the interrogatories represents the correct
153 amount taken and the value thereof, and also indicates the payments to the respective parties.

The Standard Oil Company of Louisiana did not operate this propery but bought the oil from the operators and respective royalty claimants. No oil has been taken from the property by this defendant since the date of the rendition of the statement annexed to the answers to the interrogatories.

I hereby certify that the above and foregoing is a true and correct translation of my stenographic notes taken on the trial of the above numbered and entitled causes.

R. B. COOK, Stenographer.

154 Statement Showing the Production of Greene No. 5 and the Division of the Oil Between C. J. Greene, Amateur Oil Co., The Louisiana Oil Refining Co., and The Louisiana Oil Refining Corporation.

No. 5 Produced.

		Value.
August 10, 1916 to May 15, 1917	1304.09 bbls.	$1686.36

All of this oil was purchased by the Louisiana Oil Refining Co. and the proceeds divided as follows:

C. J. Greene	163.01 bbls.	$ 210.79
Amateur Oil Co.	1141.08 bbls.	1475.57
May 16 to December 31, 1917...	767.81 bbls.	$1485.17

All of this oil was produced and sold by The Louisiana Oil Refining Corporation and the proceeds divided as follows:

C. J. Greene (Royalty)	95.97 bbls.	$185.65
The Louisiana Oil Refining Corporation	671.84 bbls.	1299.52

Counter-Claim.

Cost of drilling well Greene No. 5 as shown by Amateur Oil Co.	$6194.78
Cost of operation from Aug. 10, 1916 to May 15, 1917	834.00
Cost of operation from May 16 to December 31, 1917	741.74
Total	$7770.52

Summary.

Total Amt. in dollars received by the Amateur Oil Co. and purchased by The Louisiana Oil Refining Co.	$1475.57
Total Amt. in dollars received by The Louisiana Oil Refining Corporation	1299.52
Total Amt. received by C. J. Greene in dollars as Royalty from the Amateur Oil Co. and The Louisiana Oil Refining Corporation	396.44
Total	$3171.53
Total Counter-Claim	$7770.52

This statement prepared by Jas. W. Neal, Special Agent General Land Office as agreed.

JAS. W. NEAL.
R. B. COOK, Stenographer.

Filed Jan. 21, 1919.

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155 NO. 1155—PLAINTIFF A. 16.

4-207.

DMG—"FS" Department of the Interior,
"B" General Land Office,
CRGO Washington, D. C.

January 16, 1918.

I hereby certify that the annexed extract of Louisiana tract book, so far as it shows section 27, T. 20 N., R. 16 W., Louisiana Meridian, is a true and literal exemplification from the tract book on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) D. K. PARROT,
Acting Assistant Commissioner
of the General Land Office.

Indorsed:—Plaintiff A. R. B. Cook, Stenographer. Filed Jan. 21, 1919.

Description of Tract.

4-600.

(Offered at Sale on the 27th Jany., 1840).

Township No. 20 N. Range No. 16 W., District of Natchitoches, La.

Tp. withdrawn from all disposal by Secy. Dec. 15, 1908. See "A" to R. & R. Natch., Dec. 15, 1908.

Petroleum Reserve No. 4, Ex. Order July 2, 1910, Letter "N" July 16, 1910—54239.

Resurvey (or Restoration survey) Plat approved July 25, 1916 (no areas shown, original plat governs).

Suppl. Plats, (Sheets 1 and 2) of part of Tp. approved March 28, 1917, received in local office, Baton Rouge, April 14, 1917.

Part of Section—Section—Township—Range—Contents, Acres, 100ths—Rate per Acre, Dollars, Cents—Purchase Money, Dollars, Cents—Name of Purchaser—Date of Sale—Number of Receipt and Certificate of Purchase—To Whom Patented—Date of Patent—Where Recorded, Volume, Page.

Frl. NW 4 W 2 frl. SW frl offd. Apr. 24, 1880.

NE¼ of SE¼; 27; 20; 16.

N frl. ½ of NE fr. qr. of SE¼ and NE. frl. ¼; 27; 20; 16; 468.87; 123.49; .75; 92.62; Matthew G. Jackson; 1859—March 3; 14454; 14454.

S. fr. ½ of NE fr. qr.

Lot 1—14.13.

Lot 2—29.34.

Lot 3—36.43.

NW. fr. qr. 6800.

E½ SW¼ and NW SE¼; 27; 20; 16; 118.87; 1.25; 148.59; Matthew G. Jackson; July 12, 1853 9669; 9669. SE qr. 158:50.

NW¼ SE¼.

S½ SE¼; 27; 20; 16; 79.25; located by William Rakertsow; 1852—Sept. 9th per Milit Warrant No. 40,312 Act. 1850.

Hd.; 27; 20; 16; 147.25; 10.00; Royden D. Elmore; June 24, 1904; 10439; Canceled by "H" June 13, 1908.

SW qr. 15850.

Hd. NW. frl. ¼ and W½ SW¼; 27;20;16; 147.25; 038.55; 13.68; Charles J. Greene; June 20, 1908; 11245; Natch—Baton Rouge 03855—Cash 29, 1911.

156 "B" ... 4-207.

CRGO Department of the Interior,
General Land Office,
Washington, D. C.

November 8, 1917.

I hereby certify that the annexed copy of letter dated December 15, 1908, is a true and literal exemplification from the perss copy on file in this office.

In witness whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(Seal) D. K. PARROTT,
Acting Assistant Commissioner of
the General Land Office.

(PLAINTIFF'S EXHIBIT "C.").

Filed Jan. 21, 1919. File.

Department of the Interior,
General Land Office.
Washington, D. C.

Address only the
Commissioner of the
General Land Office.

December 15, 1908.

See also 1910-44655.

Register and Receiver,
Natchitoches, Louisiana.

Sirs:

To conserve the public interests, and, in aid of such legislation as may hereafter to proposed or recommended, the public lands in Townships 15 to 23 North, and Ranges 10 to 16 West, Louisiana Meridian, Natchitoches Land Office, Louisiana, are, subject to existing valid claims,

withdrawn from settlement and entry, or other forms of appropriation.

Respectfully,

FRED DENNETT, Commissioner.

Approved:

JAMES RUDOLPH GARFIELD,
Secretary.

157 (PLAINTIFF'S EXHIBIT "D")

4-207.

"B".
CRGO.

Department of the Interior,
General Land Office,
Washington, D. C. November 8, 1917.

I hereby certify that the annexed copy of order of withdrawal, Petroleum Reserve No. 4, approved July 2, 1910, is a true and literal exemplification from the original order on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

D. K. PARROTT,
(Seal) Acting Assistant Commissioner of the General Land Office.

ECF.
dmg-1 fs q 54239
Jul. 9, 1910.

Department of the Interior,
United States Geological Survey,
Washington, July 1, 1910.

Office of the Director.

The Honorable,
The Secretary of the Interior.

Sir:

In accordance with your instructions I recommend the withdrawal for classification and in aid of legislation affecting the use and disposition of petroleum deposits belonging to the United States of the following areas in the State of Louisiana, involving approximately 314,720 acres:

Order of Withdrawal.

Petroleum Reserve No. 4.

It is hereby ordered that that certain order of with-

158 Petroleum reserve No. 4, p. 2.
dmg-2 fs.

drawal heretofore made on December 15, 1908, in so far as the same includes any of the lands hereinafter described, be, and the same is hereby ratified, confirmed, and continued in full force and effect; and subject to all the provisions, limitations, exceptions, and conditions contained in the act of Congress entitled "An Act to authorize the President of the United States to make withdrawals of public lands in certain cases," approved June 25, 1910, there is hereby withdrawn from settlement, location, sale

or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States, all of these certain lands of the United States set forth and particularly described as follows, to wit:

Louisiana Principal Meridian, Louisiana.

T. 17 N., R. 10 W., all of township.
T. 18 N., R. 10 W., all of township.
T. 18 N., Rs. 14 to 16W.
T. 19 N., Rs. 14 to 16W.
T. 20 N., Rs. 14 to 16 W.
T. 21 N., Rs. 14 to 16 W.
T. 22 N., R. 15 W., all of township.
T. 22 N., R. 16 W., all of township.
T. 23 N., R. 15 W., all of township.
T. 23 N., R. 16 W., all of township.

Very respectfully,

GEO. OTIS SMITH,
Director.

July 1, 1910.

Respectfully referred to the President with the recommendation that the same be approved.

R. A. BALLINGER,
Secretary.

Approved July 2, 1910, and referred to the Secretary of the Interior.

WM. H. TAFT,
President.

159 Referred to the Commissioner of the General Land Office for appropriate action.

FRANK PIERCE,
Acting Secretary.
DMC.

Indorsed: Pl. D. R. B. Cook Stenographer, Filed Jan. 21, 1919.
B.

4-600.

160 (PLAINTIFF'S EXHIBIT "E")

Township No. 20 North, Range No. 16 West., District of Natchitoches, La.

Description of Tract.

Part of Section—Section—Township—Range—Contents, Acres, 100ths—Rate per Acre, Dollars, Cents—Purchase Money, Dollars, Cents—Name of Purchaser—Date of Sale—Number of Receipt and Certificate of Purchase—To whom Patented—Date of Patent—Where Recorded, Volume, Page.

NW¼ NE¼; 9; 20 N; 16 W; 40.00; Thomas H. Pitts; July 6, 1874; 17860; Thomas H. Pitts; Mar. 1, 1878; 31: 492.

Lots 1 & 2 frl. Sec. 4; 6 frl. ½ or Lots 2 & 3; NW¼ NE¼, Lots 1 & 4; 9; 20N; 160; 160.00; 125; H. E; Thomas H. Pitts; Aug. 29, 1871; 287; Commuted to Cash Entry No. 17680 & Mil. Wt. No. 34916 and Excess R. No. 17680. Patent Transmitted to James H. Noel, Mooringsport, La. —by Hon. Commr. Feby. 27, 1892.

NE¼ NE¼ 9; 20N; 160; 40.00; Approved as Swamp & Overflow Land to State of Louisiana; List 81 by Secty. of Interior, June 12, 1900; L. 2015; L. 2231.

Pre. 38 Frl. Section 24; 20N; 160; 114.80; 125; 143.50; James Sherick, 25 Jany., 1840; 1829.

United States Land Office,
Baton Rouge, La.
Dec. 15, 1917.

We hereby certify that the foregoing has been compared with the records of this office, and is a full, true and correct copy.

E. D. GIANELLONI, Register.
.....Receiver.

No. 1155. —19. Plaintiff E. R. B. Cook, Stenographer. Filed Jan. 21, 1919, J. D. McClure, Cf. Dy. Clerk, U. S. District Court, West. Dist. of Louisiana.

161 Notice of Location. Conv. Book 59, page 569, No. 17465. Dated June 10, 1910. Filed June 13, 1910. 1 Witness.

Notice is hereby given that the undersigned, all of whom are residents of the United States, having complied with the requirements of Chapter Six of Title Thirty-two, of the Revised Statutes of the United States and the Local Laws, Rules and Regulations and under the authority of the Act of Congress of Feb. 11, 1897 relating to the location of land containing oil and other mineral ore under Placer Mining Plain; the undersigned has located 147 25/100 acres of land in the Parish of Caddo, State of Louisiana, and described as follows:

The W½ of the SW¼ and NW¼ Frl. Fourth of Section 27, Twp. 20, Rng. 16. West, La. Mer., Caddo Parish, Louisiana.

Witness our hands and seal on this the 10th day of June 1910.

Attest:
TURNER COMINGS.

Locators.
WILLIAM STRACHEN, per
C. J. GREEN, Jr.,
THOMAS STRACHAN, per
C. J. GREEN, Jr.,
ALEX STRACHAN, per
C. J. GREEN, Jr.,
W. STRACHAN, per
C. J. GREEN, Jr.,
A. STRACHAN, per
C. J. GREEN, Jr.,
MARY STRACHAN, per
C. J. GREEN, Jr.,
WILL GREENE, per
C. J. GREEN, Jr.,
L. GREEN, per.
C. J. GREEN.

162 Notice of Location Conv. Book 59 Page 598, No. 17555. Dated June 17th, 1910. Filed June 20, 1910, 2 Witnesses.

Notice is hereby given that the undersigned, all of whom are residents of the United States, having complied with the requirements of Chapter Six of the Title Thirty Two

(32) of the Revised Statutes of the United States and the Local Laws, rules and regulations and under the authority of the Act of Congress of Feb. 11th, 1897, relating to the location of lands containing oil and other mineral ore under Placer Mining Plain; the undersigned has located 61.75 acres of land in the Parish of Caddo, State of Louisiana and described as follows:—

The Frl. W½ of Sec. 22 and all land below the U. S. Traverse in NW Frl. ¼ sec. 27 (all in T. 20 R. 16 W. La. Mer.)

Witness our hands and seal on this the June 17th, 1910.

Locators.

ROBERT B. GREEN,
ROY KEENY,
CARL DeSEAY,
C. J. GREEN, Jr.
Attorney for all.

Attest:
C. J. GREEN, Jr.
JOHN ALLEN.

163 Notice of Location Conv. Book 80, page 638, No. 36777. Dated January 22, 1913. Filed January 23, 1913.

Jessie S. Greene
to
The Public.

Notice is hereby given that the undersigned, all citizens of the United States, having formed an association for mining purposes in State of Louisiana and having complied with Chapter 6 of Title 32 of the Revised Stat-

utes of the United States and Act of Congress approved Feb. 11, 1897, entitled an Act to authorize the Entry and Patenting of lands containing petroleum of other mineral oils under the Placer Mining Laws, of the United States, have filed and located on the following described lands:

Fractional NW¼ of Sec. 27 between U. S. Traverse line and Lake and in SW¼ Sec. 22, all in Twp. 20. Rng. 16, containing 80 acres more or less, situated in Caddo Parish, La.

Witness:
CHAS. J. GREENE, Jr.
L. S. ELLETT.

Locators:
JESSIE S. GREENE,
ROBERT B. GREENE,
C. G. GREENE,
J. ROY KEENY,
All Pres. Chas J. Greene

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164 (AGREEMENT OF COUNSEL AS TO TRANSCRIPT.)

Whereas it was agreed upon the trial of the aforesaid case that the evidence theretofore adduced in the case entitled United States of America versus Jeems Bayou Hunting & Fishing Club, et al, No. 1157, on the docket of the United States District Court for the Western District of Louisiana, at Shreveport, Louisiana, should be offered in evidence and considered as if taken in the aforesaid case in so far as such evidence and the exhibits filed in connection therewith were applicable to the issues of the aforesaid case; and

Whereas there were introduced in evidence on the trial of the aforesaid case numerous plats and maps of surveys, photographs and other documents and exhibits, the reproduction of all of which in the transcript of appeal would entail heavy and undue expense and costs; and

Whereas there was received in the aforesaid case much expert and technical evidence which would be very difficult to reduce to a clear and exact narrative form; and

Whereas it is deemed desirable by counsel for plaintiff and defendants in the above entitled case that the testimony of witnesses be reproduced in the exact words of said witnesses;

Now, therefore, it is hereby agreed and stipulated by and between counsel for plaintiff and defendants respectively, with the direction of the Honorable Judge of the United States District Court for the Western District of Louisiana, that all plats, maps of surveys, photographs and other exhibits introduced and filed in evidence by the plaintiff or defendants, or any of them, in the above entitled case, with the exception of such plats, maps and exhibits that are to be incorporated in the transcript in this cause, in accordance with the precipe filed by defendants, a copy of which has been delivered to plaintiff's attorney, shall be transmitted to the United States Circuit Court of Appeals for the Fifth Circuit, sitting at New Orleans, Louisiana, in the original and shall be deemed and considered a part of the transcript of appeal; and it is further agreed that the testimony of witnesses, taken in the aforesaid case, shall be reproduced in the exact words of the witnesses.

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It is further agreed and stipulated that as to the deeds and conveyances or other instruments introduced in evi-

dence in the aforesaid case, it will only be necessary to state the dates of said deeds or conveyances, their nature and object and the description of the land affected thereby, all other matters being omitted, unless otherwise directed by the precipe of either party.

It is further agreed and stipulated that the transcript of appeal in the case entitled United States of America versus Jeems Bayou Hunting & Fishing Club, et al., No. 1157 on the docket of the United States District Court for the Western District of Louisiana at Shreveport, Louisiana, and the exhibits and documents made a part thereof, shall be deemed and considered as a part of the transcript in the above entitled case, in so far as applicable to the issues in such case, to the same extent and with the same effect as if formally incorporated in the transcript in this cause.

ROBERT A. HUNTER,
Solicitor for Plaintiff.

COOK & COOK,
Solicitors for Charles J. Greene, Jr.

BLANCHARD, GOLDSTEIN & WALKER,
Solicitors for Louisiana Oil Refining Corporation and Louisiana Oil Refining Company.

166 (PRAECIPE FOR TRANSCRIPT).

Honorable W. B. Lee, Clerk of the United States District Court, Shreveport, La.

Dear Sir:-

You will please prepare the transcript of appeal in the above entitled cause, returnable to the Circuit Court of Appeals of the United States for the Fifth Circuit, sitting at New Orleans, in the State of Louisiana, and you will include in said transcript the following:

1. Bill of Complaint of plaintiff, filed July 19, 1917,

2. Answer of Amateur Oil Company, Incorporated, filed August 13, 1917.

3. Plaintiff's reply to set-off and counterclaim of Amateur Oil Company, Incorporated, filed August 18, 1917.

4. Application and order for interrogatories and interrogatories, filed by plaintiff February 20, 1918, and answers thereto.

5. Answer of Charles J. Greene, Jr., to the bill of complaint filed March 18, 1918.

6. Answer of Louisiana Oil Refining Company and Louisiana Oil Refining Corporation to the bill of complaint, filed ....., 1918.

7. Order of Court dated March 29, 1918, and filed same date, appointing Honorable E. H. Randolph Special Master.

8. In full the opinion and recommendations of the Honorable E. H. Randolph, Special Master, filed January 11, 1919.

9. Exceptions of C. J. Greene, Jr., and Louisiana Oil Refining Corporation and Louisiana Oil Refining Company to the report of the Special Master, filed January 30, 1919.

10. Opinion of the Honorable Rufus E. Foster, Judge, filed under date July 17, 1919.

11. Decree entered by the Honorable Rufus E. Foster, Judge and filed August 12, 1919.

12. Defendants' petition for appeal and order of appeal, filed under date of September ....., 1919.

13. Defendants' assignment of errors, filed under date of September ....., 1919.

167 14. Supersedeas bond for appeal filed by defendants, Charles J. Greene, Jr., Louisiana Oil Refining Corporation and Louisiana Oil Refining Company under date of September ....., 1919.

15. The testimony of the following witnesses:

J. W. Neal;
Arthur D. Kidder;
L. L. Clement;
Dr. Henry C. Cowles;
Lionel L. Janes;
Frank C. Leverett.

16. Extract from tract books of the General Land Office relating to Section 27, Township 20 North, Range 16 West, marked plaintiff A.

17. Withdrawal order dated December 15, 1908, marked plaintiff C.

18. Withdrawal Order dated July 2, 1910, marked plaintiff D.

19. Records of the United States Land Office at Baton Rouge, Louisiana, marked plaintiff E.

20. Supplemental plat of Township 20 North, Range 16 West, approved by the Commissioner of the General Land Office March 28, 1917, together with memoranda, legend and illustrative profile thereon, marked plaintiff F.

21. Supplemental topographic plat of Township 20 North, Range 16 West, together with legend, notation and certificate thereon, marked Plaintiff G.

22. Supplemental plat of Township 20 North, Range 16 West, with memoranda and legend thereon, which plat was approved by the Commissioner of the General Land Office, March 28, 1917.

23. Topographic map of Township 20 North, Range 16 West, with legend and certificate thereon, which map was approved by the Commissioner of the General Land Office, March 28, 1917, marked Plaintiff H.

24. Stipulations of counsel on page 68 of the record, together with statement of James W. Neal, Special Agent, referred to therein.

25. Mineral locations shown by abstract offered in evidence by defendants, page 69 of testimony, together with statement on page 69 of the note of evidence, containing plaintiff's offering of same, said mineral locations being dated June 17, 1910, and June 22, 1913.

26. Abstract No. 5435 compiled by Caddo Abstract Company, marked Exhibit No. 1.

27. Location of placer mining claims, Nos. 58391 and 59391, filed in evidence. (See Transcript page 69).

COOK & COOK,
Solicitor for Charles J. Greene, Jr.

BLANCHARD, GOLDSTEIN & WALKER,
Solicitors for Louisiana Oil Refining Corporation and Louisiana Oil Refining Company.

Indorsed: Praecipe and Agreement of Counsel. Filed Oct. 21, 1919.
B.

167½ STIPULATION OF COUNSEL.

In the District Court of the United States for the Western District of Louisiana.

United States of America,

v. No. 1155.

Charles J. Greene, et al.

In the above numbered and entitled cause it is agreed that the Clerk of Court shall incorporate in the transcript of appeal in this cause:

Plaintiff's petition for cross appeal, order of Court thereon and assignment of errors.

Thus done and signed this 5th day of April, 1920.

ROBERT A. HUNTER,
Attorney for Plaintiff.

BLANCHARD, GOLDSTEIN & WALKER,
Attorneys for Defendants.

Indorsed: Stipulation of Counsel. Filed Apr. 8, 1920. B.

168 United States District Court, Western District of Louisiana.

Clerk's Office:—

I, W. B. LEE, Clerk of the United States District Court for the Western District of Louisiana. do hereby certify that the foregoing ..... pages contain and and form a full, true and correct transcript of the record and proceedings had, together with the evidence adduced on the trial, in the cause of

United States of America,
Plaintiff,

vs.

Charles J. Greene, Jr. et al,
Defendants,

No. 1155 on the Equity Docket of said Court, as the originals of same appear on file in this office—the said transcript having been prepared in accordance with Agreement and Praecipe of counsel filed herein, a copy of said praecipe accompanying this transcript.

I do further certify that Items Nos. 23, 24, 25 and 26, being Plaintiff's Exhibits F, G, H and I, are sent up in the originals, but are to be printed and included in the printed transcript, and item No. 29, Abstract No. 5435, Exhibit No. 1, is sent up in the original.

Witness my hand and seal of office at the City of Shreveport, Louisiana, on this the 10 day of April, A. D., 1920.

(Seal) W. B. LEE, Clerk.
U. S. District Court, for the Western District of Louisiana.

Citations omitted from the printed record, being filed in the original.

• • • • • • • • • •

215 That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION.

Extract from the minutes of March 7th, 1921.

CHARLES J. GREENE, JR., ET AL.,
versus
THE UNITED STATES OF AMERICA, ETC. } No. 3523.

On this day this cause was called, and, after argument by Robert A Hunter, Esq., special assistant to the Attorney General, for appellee and cross appellant, and Elias Goldstein, Esq., for appellants and cross appellees, was submitted to the court.

216 OPINION OF THE COURT—FILED JULY 8TH, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING Company, and Louisiana Oil Refining Corporation, appellants and cross appellees,
versus
THE UNITED STATES OF AMERICA, APPELLEE and cross appellant. } No. 3523.

A. C. LOUCKS, STAR OIL COMPANY, AND GULF Refining Company, appellants and cross appellees,
versus
THE UNITED STATES OF AMERICA, APPELLEE and cross appellant. } No. 3525.

Appeals and cross appeals from the District Court of the United States for the Western District of Louisiana.

F. M. Cook, S. M. Cook, N. C. Blanchard, H. C. Walker, Jr., and Elias Goldstein, for appellants and cross appellees in No. 3523.

J. D. Wilkinson, S. L. Herold, J. A. Thigpen, D. Edward Green, and R. L. Batts, for appellants and cross appellees in No. 3525.

Robert A. Hunter, special assistant to the Attorney General for the United States.

Before Walker, Bryan, and King, Circuit Judges.

KING, Circuit Judge:

On July 19th, 1917, the United States filed in the United States District Court, for the Western District of Louisiana, a bill in equity against Charles J. Greene, jr., and others, seeking a decree setting up its title, and granting relief in regard to certain
217 lands described as lots 2 and 3 of section 27, township 20, north, range 16, west, Louisiana meridian, containing 65.77

acres according to a plat of survey approved March 28th, 1917, by Clay Tallman, Commissioner of the General Land Office of the United States.

On August 2nd, 1917, the United States filed a similar bill in said court against A. C. Loucks and others seeking a like decree as to the land described therein as lot number 4 of said section 27 according to the same plat of survey.

Each bill prayed a decree declaring the lands to be mineral in character, and to be the property of the United States; declaring all adverse claims or titles of the defendants to be null and void; cancelling the same as a cloud on complainant's title, and enjoining the defendants from creating any cloud on complainant's title to the lands, or any oil, gas, or mineral therein, or from extracting the same therefrom. It prayed for the appointment of a receiver to take charge of said lands pendente lite and for an accounting for the value of the oil and gas theretofore extracted therefrom by the defendants.

The defendants in each case denied the title of the United States and asserted that the land was held by them by mesne conveyances under patents theretofore granted by the United States conveying the same.

Greene and his codefendants asserted title under a patent including the fractional NW. ¼ of said section 27.

Loucks and his codefendants asserted title under a patent including the fractional NE. ¼ of said section 27. Each answer averred that at the dates of said patents said fractional NE. ¼ and NW. ¼ of said section 27 were conveyed according to the plat of survey then on file in said land office, and bordered on and adjoined Ferry
218 Lake, and there was no land indicated as between the meander line and the waters of said lake (which is a navigable body of water). That said patents embraced and conveyed the lands now claimed by the United States.

The entire township 20 was originally surveyed by one Warren, in 1839. His plat of township 20 showed Ferry Lake as the northerly boundary of fractional lot 27. No land is indicated on said plat as lying between the meander line of said lake and the waters thereof. In 1908 the presence of oil in adjacent territory caused the President to withdraw all lands of the United States in this and other townships from any manner of appropriation, and a resurvey of this township was directed where it bordered on Ferry Lake and its arms. This survey determined that the mean high water level of Ferry Lake at the time of said Warren survey in 1839, as well as in 1812, when Louisiana became a State, was 173.09 feet above the Gulf level. That Warren so recognized it and that his section lines terminated at the lake at this elevation, but that in meandering the shore of said lake in front of said section 27 Warren's courses and distances do not follow the shore of the lake, but run over high ground which at its farthest point is about 1,200 feet from the true shore line. The omitted land is intersected with several ravines running to Ferry Lake. It contains 97.64 acres divided into lots 2, 3, and 4 of section

and fractional section 23, as per said plat of survey of March 28th, 1917; the lots 2 and 3 contain 65.77 acres; No. 4 contains 14.13 acres and section 23, 17.44 acres. The acreage of section 27 as surveyed by Warren in 1839 was 468.87 acres. The acreage claimed by the defendants in case No. 3523 to be included in the Warren survey and the patent thereunder under which they claim is that in lots 2 and 3 and about ½ of the 16.61 acres described as the fractional section 23 in the Kidder survey, or 74.08 acres. That claimed by the defendants in No. 3525 is lot No. 4 of section 27 and the rest of said fractional section 23, or 23.56 acres. While these suits involve no part of the land described as section 23, the title to the acreage is necessarily disposed of by the decision of these cases.

The cases were referred to a master, who took testimony and made a report finding that the land in controversy had been omitted from the Warren survey by manifest error, and that the Government was the owner thereof. He also found that the Government was entitled to recover the value of the oil received therefrom, less all costs of extracting the same. The defendants excepted to the report, and the Government to so much thereof as allowed to defendants the cost of raising said oil.

The court overruled all exceptions and rendered a decree in favor of the Government, in accord with the master's report.

The defendants appealed, assigning error in the finding that the Government was the owner of the land, and the Government has taken a cross appeal from the finding that defendants were to be credited with the cost of raising said oil.

There was no dispute as to the facts. The only evidence on which the master predicated his finding that the patents, including the northwest and northeast fractional quarters of said section 27 did not cover the land sued for by the Government, was that the resurvey of township 20 by Kidder and a reproduction of the meander line of the Warren survey, according to the calls in Warren's field notes, did not follow the ordinary high-water elevation of 173.09 feet above Gulf level, but ran over high ground at distances varying from a few feet to about ¼ of a mile from said 173.09 feet contour. Warren's plat does not show any meander line, but gives the waters of Ferry Lake as the boundary of the fractional sections bordering thereon. The section lines of these sections are conceded to reach the ordinary high-water level, as determined by Kidder and the scientific experts to have existed at the time of Warren's survey.

Kidder's survey was made for the purpose of marking the ordinary high-water level of Ferry Lake in 1839, at the time of Warren's survey. This elevation was determined by careful examination and by ecological and geological experts, and a meander line carefully run at 173.09 feet above Gulf level, that having been fixed as the ordinary high-water level existing in 1839.

The plat of this survey also traces the meander line as given by the calls of Warren's field notes.

Both meander lines thus marked, beginning on the west side of section 27, were generally in a northeast direction to the most northerly point of the land on the south shore of Ferry Lake, as marked
221 on the Kidder and Warren plats, respectively, and then run in a southerly and southeasterly direction to section 26 on the east.

The additional land shown on Kidder's plat is a strip bounded on the north by a broken line, forming roughly an arc with the courses of Warren's meander line as its chord. Its greatest width is about one-quarter of a mile; its length is about one mile.

The evidence shows that the land in controversy was regarded as conveyed by said patents; that parts of it were cultivated and a dwelling house was erected on the part sued for in the Greene case, near the lake. The Warren plat referred to in said patents indicated Ferry Lake as the northern boundary of the land conveyed by each patent.

The only apparent reason for the departure of the traverse line from the shore of the lake is that the land was broken with ravines running down to the lake; that these ravines in times of very high water were partially flooded and the convenience of the surveyor may have occasioned a failure to follow the water level, the land left out being at the time of little value. In other parts of this survey the Warren meander line, as reproduced by Kidder, in places runs into the lake and includes within its calls, as land, small portions of the lake.

There is no suggestion of any purpose on the part of Warren not to include all the land up to the water of the lake in this section as surveyed; and if the land described in the Kidder survey
222 as outside of Warren's traverse line, in section 27, is included it still leaves section 27 a fractional section.

The evidence of the Government to the effect that the traverse line was a manifest error is only the expression of an opinion, based solely on the fact that it runs from the margin of the lake on high ground in the meander heretofore described. This opinion is based on an absence of explanation given for the discrepancy, and not on any evidence of an intention to make the line one of boundary, and to depart from the general rule. It is conceded that the survey as a whole (except in the case where a large tract was clearly omitted where Jeems Bayou and Ferry Lake unite) follows generally the contour of the lake and makes the lake the boundary.

It is also not disputed that as to the land sold by the Government in section 27 the survey referred to in the patent represented the lake as its boundary. The question therefore is:

Did the evidence in this case show that there was such a mistake in the Warren survey that the Government can now have the same corrected against the present owners of the land conveyed by its patents?

These patents respectively conveyed the land mentioned therein "according to the official plat of survey of said lands returned to the General Land Office by the surveyor general." (This was the Warren survey.)

This constituted such plat a part of the deed, "and controls so far as limits are concerned, as if such descriptive features were written out upon the face of the deed or the grant itself." Cragin v. Powell, 128 U. S. 693; McIver's Lessee v. Walker, 9 Cranch, 173, 177; Jeffries v. East Omaha Land Co., 134 U. S. 178, 194–5;
223 Chapman et al. v. St. Francis Levee District, 232 U. S. 186, 197.

The general rule, well established by decisions of the Supreme Court of the United States, is that where a meander line is run, if lands are described as bordering on a stream or body of water, the meander line is not a boundary, but the waters themselves constitute the boundary—the meander line being intended to ascertain the approximate acreage which is to be paid for. Railroad Co. v. Schurmeir, 7 Wall. 272, 286; Hardin v. Jordan, 140 U. S. 371, 380.

The patent to the fractional part of section 27 held by defendants in the Greene case called for 147.25 acres. The land claimed by the Government as outside of this acreage is 65.77 acres, and the additional land involved in section 23 is about 8.30 acres, so that the land claimed by defendants is about fifty per cent in excess of the acreage given in said patents. The acreage covered by the patent under which defendants claim in the Loucks case is 123.49½ acres, and the land claimed by the Government as outside of this acreage is 14.13 acres; the additional land involved in section 23 is about 9.44 acres, so that the land claimed by defendants in the Loucks case is not quite one-fifth of the acreage named in the patent.

The case is well within the rule that a meander line is not to be considered as a line of boundary, where the plat of survey shows a body of water as the boundary; but that there must be some absence of the body of water in the descriptions where shown on the plat, or another body of water which satisfies the natural object
224 shown, although misnamed, or a notation of intervening land, such as a marsh, so that the plat when applied to the ground shows either a clear mistake as to the existence of the natural object or a purpose not to call for it as a boundary.

The case of Michell v. Smale, 140 U. S. 406, 412, clearly demonstrates the above principle. There a fractional lot calling for 4½ acres was shown on the plat of survey as bounded by a lake. There was a point containing 25 acres outside of the meander lines, projecting into the lake. This 25 acres was subsequently surveyed by the Land Department and patented to another purchaser. The second patent was held invalid and the land decided to have been conveyed by the first patent. The court said:

"We think it a great hardship, and one not to be endured, for the Government officers to make new surveys and grants to the beds of such lakes after selling and granting the lands bordering thereon,

or represented so to be. It is nothing more nor less than taking from the first grantee a most valuable, and often the most valuable part of his grant. Plenty of speculators will always be found, as such property increases in value, to enter it and deprive the proper owner of its enjoyment; and to place such persons in possession under a new survey and grant, and put the original grantee of the adjoining property to his action of ejectment and plenary proof of his own title, is a cause of vexatious litigation which ought not to be created or sanctioned. The pretense for making such surveys, arising from the fact that strips and tongues of land are found to project into the water beyond the meander line run for the purpose of getting its general contour, and of measuring the quantity to be paid for, will always exist, since such irregular projections do always, or in most cases, exist. The difficulty of following the edge or margin of such projections, and all the various sinuosities of the water line, is the very occasion and cause of running the meander line, which by its exclusion of such irregularities of contour produces an average result closely approximating to the truth as to the quantity of upland contained in the fractional lots bordering on the lake or stream. The official plat made from such survey does not show the meander line, but shows the general form of the lake deducted therefrom, and the surrounding fractional lots adjoining and bordering on the same. The patents when issued refer to this plat for identification of the lots conveyed, and are equivalent to and have the legal effect of a declaration that they extend to and are bounded by the lake or stream. Such lake or stream itself, as a natural object or monument, is virtually and truly one of the calls of the description or boundary of the premises conveyed; and all the legal consequences of such a boundary, in the matter of riparian rights and title to land under water, regularly follow."

That acreage is not controlling in limiting the grant is clearly shown by the above case. There are many others of the same purport.

In Johnson v. Johnson, 24 L. R. A. (N. S.) (Idaho), 1251, the patent called for a tract of 86.06 acres. The natural object was held to be the boundary and to carry with it 143 acres.

Where the survey mentioned in a patent calling for 80 acres depicted a lake as a boundary, and the meander line did not coincide with the lake shore, the lake was decided to be the boundary and the patent was held to convey 100 acres lying between the meander line and the lake. Barringer v. Davis, 120 Iowa, 428, 120 N. W. 65.

See also Lindsey v. Hawes, 2 Black, 554, 560; Brown v. Huger, 21 How. 305; St. Clair v. Livingston, 23 Wall. 46, 63; Grand Rapids & Indiana R. R. Co. v. Butler, 159 U. S. 87; St. Anthony Falls Water Co. v. Board, etc., 168 U. S. 349; Chapman & Dewey v. St. Francis Levee District, 232 U. S. 186, 197.

The decisions holding the meander line to be one of boundary all recognize the general rule to be as above stated and rest on exceptions thereto. In the case of Horne v. Smith, 159 U. S. 40, the plat called for the Indian River as a boundary. There was a

226 watercourse where the plat depicted the river and the mistake was in calling it Indian River. It was held that this watercourse (not a meander line) was the boundary intended and that the patent did not include a large tract of land, never surveyed, which lay between the bayou and Indian River.

In Niles v. Cedar Point Club, 175 U. S. 300, the survey showed a tract of marsh or swamp lands beyond the meander line; the patent therefore was held to terminate at the meander line and not to carry the swamp lands lying between it and Lake Erie.

In the present cases the plat of survey shows nothing as the meander line but the shore line of Ferry Lake.

Where a plat called for a lake and there was no lake in front of the so-called meander line, but only one located outside of the side lines of the grant, it was held that the so-called meander line must be taken as the boundary instead of shifting the entire grant. French Glenn Live Stock Co. v. Springer, 185 U. S. 35.

Upon the same principle, coupled with evidence of the fraudulent character of the survey, there being no lake or body of water at or near the spot indicated on the plat of survey, rests the decision in Security Land & Exploration Co. v. Burns, 193 U. S. 182, and also Lee, Wilson & Co. v. United States, 245 U. S. 34.

The decision of the Supreme Court of the United States, in Producers Oil Co. v. Hanzen, 238 U. S. 325, affirming the decision
227 of the Supreme Court of Louisiana in 132 La. 691, lays down the general principle and illustrates the exceptions. There Bristol, a surveyor, made a survey of parts of section 3, 4, 9, and 10 of this township 20, and referred in his field notes to a spur of marsh extending "cut north." It was also admitted that the land in controversy was high land when the Bristol survey was made. This case establishes:

"As a general rule, meanders are not to be treated as boundaries, and when the United States conveys a tract of land by patent, referring to an official survey which shows the same bordering on a navigable river, the purchaser takes title up to the water line.

"Where the facts and circumstances, however, affirmatively disclose an intention to limit the grant to actual traverse lines, these must be treated as definite boundaries; and a patent to a fractional section does not necessarily confer riparian rights because of the presence of meanders.

"Where, as in this case, the survey of improved lands was made at the express request of the occupant to whom they were subsequently patented, and the grant specified the number of acres, and other circumstances also indicated that only the lands conveyed were those within the traverse lines, the patent of the United States conferred no riparian rights, but simply conveyed the specified number of acres."

That the Government has the right to make new surveys and correct errors in former ones does not in any way limit the above general rule or create a different rule where such new survey is made.

The right of the Government to make such new surveys is clear; but where the United States has previously parted with the title a new survey does not conclude a prior purchaser from asserting whatever title he has acquired by his older patent as against one claiming under the new survey. Cragin v. Powell, 128 U. S. 696; Hardin v. Jordan, 140 U. S. 371, 400; Mitchell v. Smale, 140 U. S. 406; Hardin v. Shedd, 190 U. S. 508.

228 This limitation on the effect of a new survey is recognized in the cases asserting the right of the Government to make it. Thus, in Kirwan v. Murphy, 189 U. S. 35, while the right to order a new survey is upheld, it is expressly stated that the right of the existing grantee could be thereafter asserted.

To the same effect is the decision in Lane, Secretary, v. Darlington, 249 U. S. 331.

We think that the present cases are governed by the general rule above laid down and that the patents to said section 27 convey all of the land to the waters of Ferry Lake.

The side lines of said section 27 terminate at the lake. The lake lies in the same relative position to said section, as the Warren plat of survey indicates. It lies from a few feet to less than a quarter of a mile distant from Warren's meander line as now laid on the ground on the new survey. The omitted land was at the time of little value and broken by ravines. There is no evidence of any intention to grant only to the traverse line, but the apparent purpose was to include all the land to the lake in the survey. That in each of these cases the meander line, according to its calls, is not to be treated as a boundary; but that the patents referring to an official plat which shows the land granted as bordering on the lake, the patentee took title to the water line.

The decree in each case is reversed on the appeal therein, with directions that the bill of complaint be dismissed by the District Court. Each cross appeal is dismissed.

(Original filed July 8th, 1921.)

229

JUDGMENT.

Extract from the minutes of July 8th, 1921.

CHARLES J. GREENE, JR., ET ALS.
versus
THE UNITED STATES OF AMERICA, ETC. } No. 3523.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this court, that the decree of the said District Court in this cause, be, and the same is hereby, reversed; and that this cause be, and it is hereby remanded to the said District Court with directions

to dismiss the bill of complaint; and that the cross appeal sued out herein be, and the same is hereby dismissed.

PETITION FOR APPEAL, AND ORDER ALLOWING SAME—FILED SEPTEMBER 19, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING COMPANY, and Louisiana Oil Refining Corporation, appellants and cross appellees, *v.* UNITED STATES OF AMERICA, APPELLANTS AND CROSS appellant.	No. 3523.

To the honorable, the judges of the United States Circuit Court of Appeals in and for the Fifth Circuit:

Now into this honorable court comes the United States of
230 America, appellee and cross appellant, and says that on July 8, 1921, this court entered a decree herein in favor of appellents and cross appellees and against the United States of America, in which decree there was error greatly to the prejudice and injury of appellee and cross appellant, as will more fully appear by the assignment of errors, which is attached hereto and filed herewith.

Wherefore, the United States of America prays that an appeal may be allowed in said cause from this court to the Supreme Court of the United States and that proper orders for the allowance of such an appeal be made by this court.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

ORDER.

The foregoing petition for an appeal in the above numbered and entitled cause from the United States Circuit Court of Appeals of the Fifth Circuit to the Supreme Court of the United States being considered, and the assignment of errors being attached thereto and filed therewith, it is ordered:

That an appeal be granted and allowed in the above numbered cause to the United States of America as prayed for from the United States Circuit Court of Appeals of the Fifth Circuit to the Supreme Court of the United States.

Thus done and signed this 15th day of September, 1921.

(Signed) R. W. WALKER,
Judge, United States Circuit Court of Appeals, Fifth Circuit.

231 ASSIGNMENT OF ERRORS—FILED SEPTEMBER 19TH, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

CHARLES J. GREENE, Jr., LOUISIANA OIL REFINING COMPANY, and Louisiana Oil Refining Corporation, appellants and cross appellees,	No. 3523.
v.	
UNITED STATES OF AMERICA, APPELLEE AND cross appellant.	

Now comes the United States of America, appellee and cross appellant in the above numbered and entitled cause and in connection with the petition for an appeal herein presents this assignment of errors and says that the opinion and decree entered in this cause by the United States Circuit Court of Appeals of the Fifth Circuit on July 8, 1921, is erroneous in the following particulars, to wit:

1. The court erred in holding that the plat of survey of A. W. Warren represented Ferry Lake as a boundary of fractional section 27, whereas the court should have held that if said lake is shown upon said plat as a boundary it was indicated as such in connection with the meander line and as its location was established by said meander line.

2. The court erred in not holding that the record of said survey does not show that the lines thereof were run with the
231 meander or along the margin of said lape and that as actually made upon the grouond the lines of said survey were not run with the meander or along the margin of said lake.

3. The court erred in holding that the said plat of A. W. Warren does not show a meander line, and in not holding that said meander line was the boundary of the land in dispute.

4. The court erred in holding that the land in controversy was regarded as having been conveyed by the patent issued to the said Charles J. Greene, whereas the court should have held, as found by the master, that the said Greene made mineral locations upon the tract in suit and did not consider himself as the riparian owner thereof.

5. The court erred in holding that the Government conceded that the survey as a whole followed the contour of the lakes and made such lake the boundary, and did not dispute that as to the land sold by it in section 27 the survey referred to in the patent represented the lake as the boundary.

6. The court erred in not holding that the said tract was, at the time of and since said survey, high land in place, covered with native forest trees characteristic of hill land, and was of the same character, geological formation and quality as the lands included by said Warren in his survey.

7. The court erred in not holding that there was manifest error in said survey or a material variation between the meander line thereof and Ferry Lake; that said survey did not follow or approximate the lake shore or its sinuosities; that it was run without reference to the contour of said lake over well timbered high lands averaging 25 feet above the level of the lake, and into and across deep ravines, disregarding the natural bluff along the shore line as well as the mean high water elevation of the lake; that there was no justification or excuse in the topography of the ground or otherwise for the establishment of said meander line in the position and at the elevation at which it was run, and that said line was false and misleading and did not afford reliable means of ascertaining the quantity of land in said fractional section.

8. The court erred in not holding that, inclusive of the land in suit, the said A. W. Warren omitted from his survey of the township 987.77 acres of high land in place between the so-called meander line and the mean high water elevation of Ferry Lake as it existed when the State of Louisiana was admitted into the Union and when said survey was made, and which mean high water elevation was known to said surveyor.

9. The court erred in failing to hold that the tract in controversy was not included in said survey either in fact or in law, and was not described or embraced in the patent relied upon by defendants.

10. The court erred in holding that there was no disputed issues of fact and in overruling the findings of fact made by the master in chancery herein and approved by the district judge, including the finding that the land in suit was left unsurveyed by the said A. W. Warren and belonged to the public domain of the United States.

11. The court erred in reversing the decree of the District Court insofar as same was favorable to the United States and in remanding said cause to the District Court with directions to dismiss the bill of complaint.

12. The court erred in dismissing the cross appeal and in not reversing the decree of the District Court insofar as it allowed the defendants to offset the cost of drilling the wells against the value of the oil extracted from the land in suit, and in not remanding said cause with directions for the entry of a decree in favor of plaintiff for the full value of the oil, less only the expenses incurred by defendants in operating the wells.

Wherefore the United States of America, appellee and cross appellant, prays that the opinion and decree of the United States Circuit Court of Appeals for the Fifth Circuit be reversed; that the decree of the District Court be affirmed insofar as it is favorable to the United States of America; that the said cause be remanded with directions for the entry of a decree in favor of the United States of America for the full value of the oil taken by defendants

from said land, less only the cost of operating the wells, and excluding and disallowing as an offset or credit against the value of said oil the sums expended or costs incurred by defendants in drilling said wells, to the end that the United States may recover the value of said oil free of all costs incurred in discovering or reaching the same, and for general relief.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

235 STIPULATION AS TO RECORD—FILED SEPTEMBER 19TH, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING Company, and Louisiana Oil Refining Corporation, appellants and cross appellees,
v.
UNITED STATES OF AMERICA, APPELLEE AND CROSS appellant.
} No. 3523.

With regard to the appeal taken in the above numbered and entitled cause by the United States to the Supreme Court of the United States it is stipulated by counsel for all parties as follows, to wit:

1. That the transcript of appeal shall be made up of *of* the printed record filed in the United States Circuit Court of Appeals, with the addition thereto of the proceedings had in said Court of Appeals.

2. That the transcript of appeal in case No. 3522 entitled Jeems Bayou Fishing & Hunting Club et al., v. United States of America (No. 407 on the docket of the Supreme Court of the United States), together with all the maps, plats, exhibits, and documents made a part thereof, or sent up to the Supreme Court of the United States in the original in connection therewith, shall be deemed and considered as a part of the transcript in the above numbered and entitled cause, in so far as applicable to the issues in such cause, to the same extent and with the same effect as if formally incorporated in the transcript in this cause.

236 Thus done and signed this 17th day of September, 1921.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

(Signed) S. M. COOK,
Attorneys for C. J. Greene, Jr.

(Signed) BLANCHARD, GOLDSTEIN & WALKER,
Attorneys for Louisiana Oil Refining Co., and Louisiana Oil Refining Corporation.

STIPULATION AS TO TRANSMISSION OF ORIGINAL EXHIBIT—FILED SEPTEMBER 22, 1921.

In the United States Circuit Court of Appeals, Fifth Circuit.

CHARLES J. GREENE, JR., LOUISIANA OIL REFINING Company, and Louisiana Oil Refining Corporation, appellants and cross appellees, *v.* UNITED STATES OF AMERICA, APPELLEE AND CROSS appellant.	No. 3523.

It is agreed that the abstract of title, compiled by the Caddo Abstract Company, which was offered in evidence by defendants in the District Court and sent up in the original to the Court of Appeals, shall be transmitted by the clerk of the United States Circuit Court of Appeals to the Supreme Court of the United States as a part of the record on appeal in said cause.

237 Thus done and signed this 20th day of September, 1921.

(Signed) ROBERT A. HUNTER,
Special Assistant to the Attorney General.

(Signed) COOK & COOK,
BLANCHARD, GOLDSTEIN & WALKER,
Attorney for Charles J. Greene, jr.

(Signed) BLANCHARD, GOLDSTEIN & WALKER,
Attorneys for Louisiana Oil Refining Co., and Louisiana Oil Refining Corporation.

CLERK'S CERTIFICATE.

United States of America, United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 215 to 237 next preceding this certificate contain full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said court, numbered 3523, wherein Charles J. Greene, jr., Louisiana Oil Refining Company, and Louisiana Oil Refining Corporation, are appellants and cross appellees, and the United States of America as appellee and cross appellant, as full, true, and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 214 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

238 I further certify that defendant's Exhibit No. 1, abstract of title, forwarded to this court in the original, is transmitted

herewith to the Supreme Court of the United States in the original, as per stipulation of counsel copied at page 236 of this record.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the city of New Orleans, Louisiana, in the Fifth Circuit, this 29th day of September, A. D. 1921.

[SEAL.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.

239 The United States of America, the President of the United States.

To Charles J. Greene, jr., Louisiana Oil Refining Company, and Louisiana Oil Refining Corporation, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order of appeal and assignment of errors sued out and filed in the clerk's office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein Charles J. Greene, jr., Louisiana Oil Refining Company, and Louisiana Oil Refining Corporation are appellants and cross appellees, and the United States of America is appellee and cross appellant, bearing the number 3523 on the docket of the United States Circuit Court of Appeals for the Fifth Circuit, to show cause, if any there be, why the decree rendered against the said the United States of America, and in said petition and order of appeal and assignment of errors mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this 15th day of September, in the year, of our Lord one thousand nine hundred and twenty-one.

[SEAL.]

R. W. WALKER,
United States Circuit Judge.

Service of the within citation of appeal accepted and acknowledged this 17th day of September, 1921.

S. M. COOK,
Attorneys for C. J. Greene, Jr.

BLANCHARD, GOLDSTEIN & WALKER,
Attorneys for Louisiana Oil Refining Company, and Louisiana Oil Refining Corporation.

(Endorsed on cover:) No. 3523. In the United States Circuit Court of Appeals, Fifth Circuit. Charles J. Greene, jr., et als., appellants and cross appellees, versus The United States of America, appellee and cross appellant. Citation, and acceptance of service. Filed 19th day of September, 1921. Frank H. Mortimer, clerk of the United States Circuit Court of Appeals.

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